



ECTEL's Response and Position from the Consultation on:

- (1) Revised Draft Electronic Communications Bill (EC Bill)
- (2) Proposed New Licence Template for implementation with the Electronic Communications Bill
- (3) Proposed New Licence application form for implementation with the Electronic Communications Bill
- (4) Recommendation of ECTEL on a New Licencing Regime for implementation with the Electronic Communications Bill

October 2015

For Implementation with the Electronic
Communications Bill

BACKGROUND

In 2009, ECTEL commenced the process of consultation on an Electronic Communications Bill intended to replace the current telecommunications legislation in all ECTEL Contracting States. A consultation was conducted to give stakeholders a chance to comment and contribute to the development of the legislation. This draft included provisions to address matters of competition in the telecommunications sector in ECTEL Contracting Member States, the establishment of National Telecommunications Regulatory Commissions (NTRCs) as body corporates, the setting up of a tribunal independent of the NTRC, the inclusion of more penalties for breach of the legislation amongst other things. At the end of the consultation period, a drafting consultant was engaged by ECTEL to review the representations arising from the consultation and to come up with a draft bill. This exercise was completed in November 2012.

The draft Electronic Communications Bill (hereinafter referred to as the draft Bill) was presented to the Council of Ministers at their 27th meeting held in St. Vincent and the Grenadines for review and approval. The Council proposed that the draft Bill be reviewed by the legislative drafters of the ECTEL Contracting States, after which, it should be laid before the Legal Affairs Committee of the Organisation of Eastern Caribbean States (hereinafter referred to as the LAC).

In October 2013, the Legal Department of ECTEL scheduled two rounds of meetings with legislative drafters of ECTEL Contracting States, as well as one representative of the OECS with the aim of reviewing the draft Bill. These meetings were held at ECTEL's Headquarters in Saint Lucia on 6th and 7th February 2014 and on 20th and 21st February 2014. The suggested amendments to the draft Bill, coming out of these meetings were captured by ECTEL's Consultant Drafter, who submitted an updated draft Bill to ECTEL on 25th February 2014.

One of the recommendations of these meeting was that the matter of Competition be left to a body to be established by the OECS. The setting up of a Competition Commission experienced delays and had not been commenced by February of 2015. ECTEL therefore revised the draft Bill further to include competition provisions due to the importance of this issue in the sector. ECTEL also sought to review its licensing procedures, and regulations in an attempt to address certain glaring deficiencies with the current legislation such as the transfer of licences and shares, by telecommunications operators, which inadvertently circumvented the scrutiny of the regulatory process.

This further revised draft of the EC Bill was resubmitted for public Consultation from 12th October 2015 to 30th November 2015, with a comments on comments period from

7th December 2015 to 22nd December 2015. The period also coincided with a CARCIP consultancy to review the current regulations and propose new regulations to govern areas not previously discussed in the Telecommunications Act such as regulations to address submarine cable access, procedures to be followed to address infrastructure sharing, market analysis, retail pricing and consumer protection regulations.

The work on the Bill also included a look at the licensing regime of ECTEL and necessary reforms, to cater for a more advanced regulatory regime, such as the use of one application form, when applying for a licence, rather than a different form for each type of licence. The introduction of a unified regulatory regime, or general authorization was also to be explored during the consultation. This new consultation therefore, included a proposed reform of the licensing regime and review of application forms.

The submissions from that consultation were incorporated into the draft Bill and once again ECTEL presented the draft to the Legislative Drafters of the ECTEL Contracting States on 18th and 19th February 2016 and to the LAC on 18th March 2016. The comments and suggestions from these meetings were further incorporated into the Bill, which was then presented to the Board and Council of Ministers between 11th April 2016 and 14th April 2016, along with a suite of regulations prepared by a team of CARCIP consultants. At the end of the review of these documents it was decided that some of the CARCIP regulations needed to be incorporated into the draft Bill and not be in regulations. This led to further amendments of the draft Bill and the decision to resubmit the draft Bill to the LAC. The draft Bill and its accompanying regulations will therefore be resubmitted to the LAC before its submission to the ECTEL Contracting States for passing into legislation.

What are the proposed changes intended to achieve?

The reforms proposed in the draft EC Bill are intended to give the regulatory authorities or NTRCs the ability to change their structure to body corporates and enhance their role and powers by granting them specific authority to acquire property, to separate their administrative function from judicial functions, set out to clear the funding arrangement for NTRC, the grant of more functions and powers to promote transparency in the process. It is also hoped that areas not covered in the current legislation such as mergers and acquisitions, technological convergence and an increased number of offences for non-compliance with the legislation can be addressed.

The objectives of the legislation are also to ensure that ECTEL maintains its obligations under the Treaty of 4th May 2000 and its international obligations in relation to telecommunications regulation namely:

- (a) to promote fair and efficient market conduct and sustainable competition between electronic communication providers.

- (b) To encourage, promote and facilitate and otherwise assist in the establishment, development and expansion of the electronic communications sector of member states.
- (c) To establish licensing systems that are responsive to the changes within the electronic communications sector.
- (d) To ensure the provision of electronic communications and broadcasting services at rates consistent with efficient service.
- (e) To allow for the exercise of regulatory functions in respect of the determination and approval of prices, tariffs and charges for the provision of electronic communication and broadcasting services.
- (f) To improve on the effective and efficient use of spectrum.

STRUCTURE OF RESPONSES

In preparing this document ECTEL has reviewed all comments received from Stakeholders and other interested parties at the end of the consultation period.

The issue under consideration is first identified, the comments are set out and ECTEL's position explained. A general conclusion to this document is provided, with the final draft of the Bill. The Final draft is also available on ECTEL's website.

General Comments

1. Cable & Wireless (C&W)

Cable & Wireless welcomed the opportunity to respond to the consultation. However, it expressed the view that it was unclear why ECTEL wanted to replace the current Telecommunications Act with the Electronic Communications Bill and that ECTEL has given insufficient justification for the change. The desire to replace the Act with the new Bill was therefore ill conceived as the problems which the new bill is desired to address has not been made clear and there is the risk that ECTEL will replace a strong and clear piece of legislation with a new law, which will potentially create more problems than the existing law. C&W recommended that ECTEL should replace the existing law only to address gaps or problems which significantly hamper or limit the capacity of regulators to encourage investment and competition whilst protecting public interest.

Cable & Wireless praised the current Telecommunications Act as achieving balance and expressed the view that the new draft Bill is burdensome and invasive. C&W criticized the use of dominance and significant market power interchangeably. C&W viewed the competition law rules as confusing and as a wasteful and expensive duplication of the

efforts of CARICOM and the OECS, which will result in increased cost to the sector. This will result from the transformation of NTRC into independent corporate bodies. They advocated for the draft Bill to be set aside.

ECTEL's Response

ECTEL notes that the process for developing the competition law at the CARICOM/OECS level was stalled when a decision was made by the Caricom Heads of Government, not to set up competition bodied in each Member State, but explore alternative methods as they sought to reduce cost. However, the work on an OECS Competition process has been ongoing and the OECS has embarked upon training for persons within OECS Member States in competition law, in which ECTEL has participated. The OECS is committed to establishing an OECS Competition Body to address matters of concern in Member States, hence the need for ECTEL to proceed with this legislation. The mandate of ECTEL is also to promote competition within the sector in its Member States.

2. Digicel's comments

- The draft bill introduces an outdated regulatory system for a bygone era. It increases regulatory obligations, whilst the rest of world has moved to a converging market.
- Telecommunication Providers are no longer the only ones who provide electronic communications. It is therefore unfair to expect telecommunication operators to compete with other electronic communication services, whilst subject to regulatory obligations which do not apply to their competitors.
- All service providers should be subjected to the same rules for the same service. The draft bill has failed to grasp this. This places operators in the ECTEL Member States at a disadvantage and it will damage the industry in these Member States.
- There is a lack of balance in the draft Bill as it gives ECTEL and NTRCs sweeping powers.
- The draft Bill has abrogated the role of courts and national parliaments.
- ECTEL should adopt legislation fit for purpose and not overburden service providers with red tape when they have to compete with the likes of Google, Facebook and OTT Providers.
- The current draft falls short of a best in class regulatory system as the proposals are overly prescriptive. Methods have been designed without an assessment of the market or their likely outcome.
- The bill will increase the work load of ECTEL and NTRCs and will increase cost which will fall on the consumers.
- Cost benefit /analysis of the proposals have not been carried out.
- The detailed market control provisions should be removed and enabling provisions inserted, which allow the Regulator to make a cost benefit assessment, and if it is positive design appropriate and focused regulation.

ECTEL's Response

ECTEL has considered the concerns raised by Digicel. However, the Directorate is able to regulate Providers within its jurisdiction. OTT Providers fall within various categories, such as, content providers like Facebook and Google and voice and video providers such as WhatsApp and Netflix. This content is delivered over data which has been purchased by the customer from the Telecommunications Provider. ECTEL does not regulate content. However once the content is not contrary to public decency, or national security the Telecommunications Act and the draft Bill, allows access to such content. Where Intellectual Property concerns have been raised content providers themselves such as "YouTube" and "Netflix" have shown that they are able to manage infringements. ECTEL wishes to emphasise that it does not endorse the infringement of copyright. This is confirmed and maintained in section 128 of the draft Bill.

3. NTRC St. Vincent and the Grenadines comments

- a) Name Change: Why change the name from Telecommunications Act to Electronic Communications when the meaning is the same.
- b) ECTEL to ECA and NTRC to NERC – not acceptable.

ECTEL's Response

In response to this comment, the draft Bill will be called the Electronic Communications Bill as this name embraces a wider range of transactions. Technology has moved from information being transmitted only by way of telecommunications, which involved mainly phones to information being accessed electronically. The use of the word electronic instead of telecommunications is seen to have a broader meaning and provides a futuristic perspective. In relation to the second comment by NTRC St. Vincent and the Grenadines, ECTEL accepts this observation and has decided not to change the name of the organizations.

4. Columbus Communications general comments

Columbus expressed that the time frame given for the consultation was short and that the draft Bill was prescriptive. Key objectives of regulation include transparency, accountability and predictability.

ECTEL's Response

In light of this comment ECTEL agreed to an extension of 2 weeks to the consultation period for all providers. The regulations have been developed based on international best practice. In modeling this standard the Directorate was guided by a team of Regulatory Consultants.

SECTION 2 – INTERPRETATION

Cable & Wireless - s2(b)(iv) –Interpretation -Access

C&W viewed the provisions for access as invasive and intended to give entrants a free ride over its network, undermining economic rationale for making the investment and recommended that access should not be given such a broad meaning.

ECTEL's Response

It is not the intention of ECTEL to give a “free ride” over the network of any provider. Access to networks is based on cost-oriented rates which allow for a reasonable rate of return by providers.

Section 2- Interpretation - Alternative infrastructure

Cable & Wireless

C&W requested a definition be given in the draft Bill to “alternative infrastructure”

ECTEL's Response

ECTEL notes that the definition of “alternative infrastructure” can be found on page 17 of the Draft Bill.

Section 2 – Interpretation – Name change from ECTEL to ECA

Cable & Wireless

C&W indicated that this change will require an amendment to the Treaty establishing ECTEL.

ECTEL's Response

ECTEL has considered the responses submitted to its consultation on changing the name of the organization from ECTEL to ECA and has concluded it is best to preserve the current name based on the submissions which have been received. Although as rightly stated an amendment would have been necessary had ECTEL decided to change its name, in the circumstances an amendment to the Treaty to change the name of the organization is presently not required.

Use of the word “retail customer”

Digicel's comment

Digicel stated that the meaning of “retail customer” excludes commercial models where the service to the end user is not funded through fees collected from the end user but from other sources such as advertising. They proposed the following definition:

"retail customer means a customer other than another licensee with whom the licensee has entered an agreement for the provision of an electronic communications service ".

Local Loop Unbundling (LLU) & Definition of facilities

Digicel also supports local loop unbundling. It states that it has been denied access to LIME's local loop in 2012 as they dispute that the current meaning of facilities within the Act extends to LLU. *Digicel* proposes that the definition of "facilities" be extended to include:

" facilities mean, any apparatus or other thing that is used or capable of being used for electronic or for any operation directly connected with electronic communications and any associated software, including Private Branch Exchange (PBX's) and other terminal boxes or points used for the purpose of the operation of an electronic communications network, not including customer equipment but including wires, lines, poles, ducts, towers, internal building wiring leading up to PBX's from an information and communications network."

ECTEL's Response

ECTEL proposes that the definition of retail customer should include either a customer other than another licensee who is obliged to pay periodically or on demand; or a customer who enters into an agreement with a licensee for the provision of an electronic communications service, so the definition of *Digicel* is partially adopted.

ECTEL has provided a definition for "facility" as meaning: "any apparatus or other thing that is used or capable of being used for electronic communications or for any operation directly connected with electronic communications".

NTRC St. Vincent and the Grenadines

No definition of "network" in the bill.

ECTEL's Response

ECTEL has decided against the implementation of a licencing regime which makes reference to network licences and network service licences. The Directorate recognized that further discussion and consultation would be required with providers and stakeholders to clarify the meaning of network , network-service licence and service licence. It has therefore determined that the current regime of individual and class licences remain in place and a review of the licensing regime be put on hold, with the intention of conducting a separate and thorough review of the licencing regime at a later date.

Definition of “Universal Service”

NTRC St. Vincent and the Grenadines

The definition of universal service and access does not fully capture the new scope agreed by ECTEL in consultation with the NTRCs, to enable the scope to accommodate the provision of devices and ancillary equipment or services where necessary for the provision of the service.

ECTEL’s Response

ECTEL has reviewed the definition of Universal service to reflect the concerns raised and to enable consistency with the results of the USF consultation.

Local Loop

Please clarify what will be considered as “local loop” within a Cable TV network such as that operated by FLOW. The definition applies only to PSTN. Such networks are no longer in use and it does not apply to “fiber networks” or “Docis network”.

ECTEL’s Response

ECTEL aim is to ensure that the legislation is technology neutral. The electronic communications sector is evolving rapidly and as the technology changes the legislation is designed to adapt to it.

Definition of “Application Fee”

It was represented that the definition for “application fee” on page 17 needs to be expanded. Type approval, numbering and frequency authorization are not licensee but a fee applies to them.

ECTEL’s Response

ECTEL has provided a broader definition of application fee in the draft Bill to address the concerns raised above.

Title of CEO

NTRC St. Vincent and the Grenadines

It is best practice to have the title “CEO” for regulatory bodies on page 17 of the draft Bill. The qualifications or technical expertise of the CEO needs to be outlined.

ECTEL’s Response

This has been addressed at section 15 of the Bill. The CEO is required to possess the expertise contained in the key competencies in Section 9 (2).

Definition of "Network"

NTRC St. Vincent and the Grenadines

The definition of network and service is not clear on page 18 of the bill. It would appear that a person is not able to have a single router or they will be seen as having a network. NTRC St. Vincent does not support the change to service and network licences and see the change as only causing more problems going forward.

ECTEL's Response

The Directorate takes every precaution to ensure that the language of the draft bill is not interpreted in a manner in which it is not intended.

The definition of network has therefore been changed to:

"electronic communications network" means any transmission system comprising switching, optical or routing equipment and other resources which permit the conveyance of signals by wire, radio, optical signals, electricity distribution systems, high-voltage lines or other electromagnetic means, including networks for radio and television broadcasting and cable television networks". However, there will be no change to the definition of service as the definition used has been deemed adequate.

Definition of "Interconnection"

NTRC St. Vincent and the Grenadines

Definition of 'interconnection' on page 18 is not forward looking. It should reflect interconnection of "systems" and "applications" just by having an internet connection.

ECTEL's Response

The definition of "interconnection" to be used in the Bill is:

"interconnection" means the connection of two or more separate telecommunication systems, networks, links, nodes, equipment, circuits and devices involving a physical link or interface;

It is hoped that this definition has addressed the concerns raised.

DIFFERENCE BETWEEN PARK & PUBLIC GROUND

NTRC St. Vincent and the Grenadines

What is the difference between a park and a public ground at page 19 of the draft Bill?

ECTEL's Response

The definitions have been outlined and differentiated in the draft Bill. It may be argued that a cemetery is a public ground but it is certainly not a park, to use one extreme example.

USE OF Telecommunications

NTRC St. Vincent and the Grenadines

Why was “telecommunications” used in the definition of spectrum on page 20?

ECTEL’s Response

ECTEL’s vision is that electronic communications include telecommunications. The use of the word electronic communications is forward looking and embraces the technological strides which have been made in the industry, whereas the use of the term “telecommunications” is restrictive but can be accommodated into the term “electronic communications”.

Definition of “Access”

Columbus Communications

Columbus stated that the definition of “access” is too wide and prescriptive and does not ensure the necessary balance to encourage infrastructure investment in the markets. It does not protect proprietary competitive business approaches and investments.

The aim of the legislation is to promote competition, investment, and reduce barriers to entry. It is the role of the regulator to ensure that the rules are implemented in a non-discriminatory manner. The rules apply to all operators equally and are at a cost.

ECTEL’s Response

ECTEL seeks to create a level playing field for all stakeholders who engage in the business of electronic communications within the ECTEL Contracting States. The proprietary rights of stakeholders will be always be respected. However ECTEL seeks to uphold the vision of the treaty, for the expansion of telecommunication services to all within its jurisdiction. In keeping with that vision it is imperative that “access” be granted to facilitate expansion and improvements in service, technology and to maintain economies of scale for the benefit of all.

Definition of Applicant, Application and Application Fees

NTRC Grenada

Definition for applicant, application and application fees only applies to Licence and Frequency Authorisation. It is recommended that the definition include domain name and numbering.

ECTEL’s Response

The definition of “application fee” has been amended and expanded, see above.

Definition of Broadcasting

"Broadcasting and Broadcasting Service" should include the internet as a medium for broadcaster's operating over the internet. Such operators were excluded under current framework. A facility licence should be necessary to regulate broadcasters with build out facilities, which uses the internet as the medium to disseminate.

ECTEL's Response

The definition of "**broadcasting**" will be amended: to mean the transmission of radio or video programming to the public on a free, pay, subscription, or other basis, whether by cable television, terrestrial, Internet, or satellite means, or by other electronic delivery of such programming;" It should be noted that under the current framework anyone with network facilities should possess a licence. Broadcasters who buildout networks require a class licence.

Definition of Universal Service & Access

"Universal Service and access"- it is recommended that "police station" in s.s. (c) be replaced with public safety agencies to coincide with s. 37 and s.s. 9 (h)

ECTEL's Response

ECTEL agrees with this suggestion as it is broad and will encapsulate fire stations etc. This change will be made in both the EC Bill and the Treaty.

Definition of "Register"

NTRC Grenada

"Register" definition excludes country domain name and numbering. Also recommended, was that the Commission is given the power to maintain a register for Numbers and Country Internet Domain Names.

ECTEL's Response

The NTRCs are responsible for the registration and management of internet domain names. The draft Bill now gives the NTRC explicit power to appoint a third party to manage and administer this obligation on their behalf.

SECTION 3 – OBJECTIVES OF THIS ACT

Regulation of Over the Top (OTT) Providers

Cable & Wireless

C&W objected to what they perceived to be a blanket requirement to facilitate OTTs, which would lead to unfair competition. They advocated for an exception to be applied allowing the blocking of illegal activity such as child pornography, theft of intellectual property via illegal downloads. The growing number of OTT service/applications is increasing and these applications bring no benefit to government. That polices on

matters such as LLU, colocation should be arrived at after robust factual economic analysis, and should often have a time limit, to enable incentivized investment in infrastructure.

ECTEL's Response

ECTEL has addressed this above and repeats its response here:

"ECTEL has considered the concerns raised by C&W, however the Directorate is able to regulate providers within its jurisdiction. OTTs come within different categories, content providers such as Facebook and Google and voice and video providers such as WhatsApp and Netflix. This content is delivered over data which has been purchased by the customer from the Telecommunications Provider. ECTEL does not regulate content. However once the content is not contrary to public decency, or national security the Telecommunications Act and the draft Bill, allows for access to such content. Where Intellectual Property Concerns have been raised, content providers themselves such as "YouTube" and "Netflix" have shown that they are able to manage infringements. ECTEL does not endorse the infringement of copyright and such infringements are strictly forbidden at section 128 of the Bill".

NET NEUTRALITY

Digicel's comments

Digicel supports a free and open internet but objects to the inclusion of the principle of net neutrality as an object of the Act. Digicel objects to ECTEL enshrining this in law as the concept remains uncertain. The US, EU and Australia are all following different approaches.

This will restrict commercial freedom in the ECTEL Member States and deter investment in broadband. Such law should only be passed when policy makers and regulators have a clear policy framework and policy goals to test whether the proposed approach is actually fit for purpose and delivers maximum benefit to the various stakeholders based on actual market conditions.

Digicel suggested the following policy questions to be considered before "net neutrality" can be decided upon:

- Do you want to maximize broadband connectivity?
- Do we want to maximize internet usage?
- The extent to which inclusiveness is a goal.
- Do we believe that the commercial benefits of the converged internet should be concentrated or distributed?
- The extent to which different services and service providers should be protected.

Further they represent that net neutrality obliterate the incentive to innovate and expand networks.

ECTEL is trying to enshrine 'net neutrality' by stealth, when it is committed to discuss this further with Digicel. The definition would allow illegal content and pornography. Digicel requested that this section be removed from the draft Bill.

ECTEL's Response

ECTEL is committed to an open Internet. ECTEL notes the path followed in other jurisdictions and has taken them into account. The Directorate concludes that it is best to adopt a free and open internet as this is in the best interest of its Member States within the safeguards of maintaining public decency, national security and other legal provisions. ECTEL has previously consulted on "net neutrality" and in keeping with the spirit of the Treaty will consult on OTTs in the near future.

Both Europe and the US have made regulations in favour of "net neutrality rules." These regulations protect internet access, the use of any device to access the internet and no blocking, or throttling. ECTEL is also committed to reasonable network management and the issues raised, by net neutrality, OTTs, and network management should not be confused.

REGULATION OF CONTENT

NTRC St. Vincent and the Grenadines

If the bill does not apply to content, is section 3(2) (d) not dealing with content?***

ECTEL's Response

Although ECTEL does not regulate content, its commitment to "net neutrality" does require it to ensure that internet access is not compromised. Access to the internet is separate from the content which is provided once one is on the internet. ECTEL regulates access and advocates for unrestricted access, however the matter of content accessed on the internet is governed by the general law and its restriction such as the protection of public decency which is contained in the Telecommunication Act and other legislation.

USE OF IMPROVE

NTRC St. Vincent and the Grenadines

At s 3(2) (n) why is the term "improve" used and not "ensure" or a similar term?

ECTEL's Response

ECTEL notes the observation made and has adopted it. The word "improve" will be replaced with "ensure".

Section 3(1)(d)

Columbus represented that by ensuring compliance with “net neutrality” OTT providers were being given unfettered access both from outside the jurisdiction and inside. These service providers operate illegally and there is nothing in the draft Bill which seeks to address this issue. OTTs invest nothing but their activities place existing employment and investment.

ECTEL’s Response

Net Neutrality protects the right of the individual as an end-users to access and distribute internet content and services of their choice.

OTTs are only a small segment of applications delivered over the internet and this will be addressed in a separate consultation.

NON APPLICATION OF THIS ACT

BROADCASTING CONTENT

Section 5

NTRC St. Vincent and the Grenadines

If this Act does not apply to broadcasting content does it apply to other content by providers?

ECTEL’s Response

Other content has not been described. The point needs to be made more specific before a response can be provided. It is electronic communications which is of concern to ECTEL. Broadcasting content is addressed by a separate agency in each Member State.

EXEMPTIONS

Section 6- Exemptions

Cable & Wireless indicated that this provision was drafted too widely and is open to abuse. There should therefore be some limit on the powers of the Minister to exempt parties from the Act.

Section 6 should read upon the recommendation of ECTEL and not the Commission.

ECTEL’s Response

The powers of the Minister have always been exercised upon the the recommendation of ECTEL or the Commission. The recommendation will come from either party depending on the subject matter to be addressed. This section will be amended to reflect section 6 (1) (a), (b), (c) of the Telecommunications Act.

NTRC St. Vincent and the Grenadines

- (i) Is the power given to the Minister under 6(1) legal as the licensee classes and types are now included in the bill, and not in other instruments, how can he now exempt, as parliament has outlined what is to be licensed?
- (ii) What kind of recommendation is the Commission to make under section 6(4) what is foreseen?

ECTEL's Response

This provision is consistent with the provisions of the Telecommunications Act. The Commission has power to make recommendations in relation to class licences. The Commission on the recommendation of ECTEL, may also grant exemptions subject to section 6 of the Bill.

SECTION 7 – POWERS AND DUTIES OF THE MINISTER

Cable & Wireless

C&W stated that this section will undermine a harmonized telecommunications sector as it does not require the Minister or the NTRC to consult with ECTEL.

ECTEL's Response

ECTEL agrees with the view of the providers that the Minister will make recommendations based on the advice of ECTEL and not the Commission.

In Section 7 (2) after “of a general nature,” add “on the Electronic Communication Sector”. ECTEL to inform providers that the Minister is mandated to provide policy direction on matters related to electronic communications.

Section 7(1) - COLUMBUS: - in this section the Minister may implement policy acting on the recommendation of the Commission. This is a change of position as the previous draft required this to be done on the recommendation of ECTEL.

ECTEL's Response

ECTEL agrees with this observation by C&W & Columbus. The clause has therefore been amended to say “as recommended by ECTEL”.

DIGICEL's comment

As it is worded to state that the Minister shall implement policy proposed by the Commission, it appears to remove power from an elected Minister and place it in the hands of unelected officials. Section 7(1) (b) devolves the ability to enact subsidiary legislation to the Commission.

ECTEL's Response

ECTEL to recommend that 7 (1)(c) be amended to reflect: `...sets/establish policy on electronic communications sector after consultation with ECTEL and the Commission.

SECTION 8 – ESTABLISHMENT OF THE COMMISSION

Columbus Communications' comment

The establishment of the Commission as a corporate body will increase cost of operations. The use of public officers restricts the independence of the Board of commissioners.

ECTEL's Response

The setting up of the Commissions as corporate bodies gives them express power to sue and be sued. The Telecommunications Act gave only an implied power, which was constantly being challenged. The Commission is still under a duty under Article 3 (2) of the Treaty to co-ordinate and liaise with ECTEL. The element of increased cost should the NTRC become a corporate body has not been identified by the operator, however the legislation seeks to change the corporate structure not the operational structure. Therefore, no significant financial cost is envisaged by ECTEL. There has been a reduction in the number of public officers under the EC Bill. The number of public officers is now restricted to 3, a provision which was not previously available under the Telecommunications Act.

SECTION 9 – COMPOSITION OF THE COMMISSION

Cable & Wireless's comment

C&W objected to the presence of public officers on the Commission and expressed the view that this was an extension of the Minister's will. They also suggested that at least one Commissioner should have experience in spectrum matters. That spectrum management should be prioritized. ECTEL should ensure that the release of LTE spectrum is efficient and fair.

ECTEL's Response

Under the Treaty ECTEL is responsible for spectrum. The suggestion by C&W is noted. ECTEL has always set a high priority on spectrum. ECTEL must ensure that providers are not allowed to simply hold spectrum which is not being used by them. Spectrum should not be held only to restrict entry by other interested parties into the market. It should be borne in mind that the burden to pay for spectrum held falls on the holder whether or not that spectrum is used.

SECTION 11 – FUNCTIONS OF THE COMMISSION

Section 11(1)(e) and 11(3)

Cable & Wireless's comment

In relation to **section 11(1)**, **C&W** expressed that the intent of this provision is unclear. The provision enabling rates to be regulated in the public interest should be deleted.

ECTEL's Response

ECTEL notes that: 'Regulation in the public interest is an established principle. The Minister for example has power to make decisions in the Public interest and to amend licences. In Section 11, (1) (e) (v1) will be retained as public interest is an established concept.

Cable & Wireless's comment

C&W expressed the view that section 11(3) and section 42(5)(c),should be deleted as they relate to broadcasting content, to which the Act does not apply.

ECTEL's Response

The section relates to determining the rates for the transmission of a broadcasting service. In doing so, it allows the Regulator to consider the cost of content. It does not relate to the regulation of content. The same applies in relation to section 42(5)(c).

DUTY TO CONSULT

Digicel purports that section 11, gives the Commission unfettered powers in the exercise of its function. There should be a duty to consult and to be proportionate, reasonable and justified is desirable.

ECTEL's Response

ECTEL and the Commissions have always acted within the principles of Natural Justice and can be challenged for failing to do so. It therefore does not deem it necessary to enshrine that duty to act within those principles into the Bill. Article 4 (1) (j) of the Treaty states as one of the major purposes of ECTEL "to promote national consultations in the development of telecommunications".

IDENTIFICATION & CLARIFICATION OF ROLES

NTRC St. Vincent and the Grenadines's comment

NTRC requested clarification in relation to section 11(k). If the Commission cannot disapprove an interconnection agreement approved by ECTEL then, this should be an ECTEL function.

ECTEL's Response

There was no significant change to the interconnection regime currently in use. Therefore, NTRC's are required to work with ECTEL in concluding interconnection agreements. This is the general practice in several areas and does not simply apply to interconnection agreements as ECTEL may have the expertise needed to guide and provide a recommendation to the NTRC. This is generally the established working relationship of the NTRC and ECTEL.

NTRC SVG further observed that s11((1)(m)- should be amended to read '.. national and regional authorities established..'. NTRC SVG believes that this change will cater for entities such as the CARICOM Competition Commission (CCC).

ECTEL's Response

ECTEL has accepted this change and will insert regional after 'national and regional authorities.

HANDING OVER OF COMPETITION ISSUES TO THE CARIBBEAN COMPETITION COMMISSION (CCC)

NTRC St. Vincent and the Grenadines's comment

Section 11(k) - The Bill should cater for the handing over of competition issues to the CCC. (see revised Treaty of Chaguaramas which outlines how the CCC can intercede at the national level).

Columbus Communications's comment

- (i) Section 11(1) (k) - indicated that this clause states that the Commission is to liaise with national competition authority. It is not aware of any national competition bodies in the ECTEL region and a prerequisite for establishing such a body is the existence of competition law.
- (ii) Section 11(1) (t) speaks to duty of the commission to specify quality of service standards as a means of enforcing compliance but does make any reference to industry consultations with stakeholders. The right balance needs to be struck to promote overall market efficiency.
- (iii) Section 11(2) –this section indicates that the commission shall where necessary consult with ECTEL. This they indicated would lead to less harmonization.

ECTEL's Response

ECTEL is of the view that the provision is in accordance with the Treaty.

RATES FOR BROADCASTING

Columbus Communications's comment

Section 11(3) - This speaks to the commission determining rates for broadcasting services and in doing so considering content. This bill does not cover content. This clause is therefore at variance with this position.

NTRC St. Vincent and the Grenadines's comment

Section 11(3) appears to be conflicting with section 5. Section has been reworded to address conflict.

ECTEL's Response

ECTEL will be considering the cost of content in determining the rate set for the service but not the content itself.

CONTENT REGULATION

Section 11(3)(b) There is no national body to regulate broadcast content. Neither will there be one in the medium term. Content is part and parcel of convergence.

ECTEL's Response

Content is addressed in each ECTEL Contracting State as a separate issue from the regulation of telecommunications. Within the Telecommunications Act of the Contracting States, content is addressed to the extent that it is not to be contrary to public decency and national security.

POWERS OF THE COMMISSION

Section 13 – Powers of the Commission

Cable & Wireless's comment

C&W has indicated that section 13(f) is incomplete.

ECTEL's Response

ECTEL agrees that Section 13 (2) (f) should be amended by inserting between "gazette" and "codes", the word 'issue' and removing the word 'to' at the end of the section.

ECTEL agrees that in Section 13 (2) (h), the word 'in managing' should be removed and replaced with "manage".

NTRC St. Vincent and the Grenadines's comment

Section 13(2) (f) needs clarification it is not clear as worded.

ECTEL's Response

ECTEL accepts the observations of C&W and NTRC SVG and will amend accordingly as words appear to have been omitted or the sections need clarification.

SECTION 14 – CHAIRPERSON AND DEPUTY CHAIRPERSON

NTRC St. Vincent and the Grenadines's comment

Section 14 (2) is not practical as worded. The current provisions in the Telecommunications Act have worked perfectly and this should not be amended. It is also similar to what is in s19(5) (c). Further what happens if both Chairman and Deputy Chair are absent?

ECTEL's Response

ECTEL recommends that section 14 (2) be reworded to read that the Minister shall designate one of the commissioners to serve as deputy chairperson.

SECTION 15 – CHIEF EXECUTIVE OFFICERS

Cable & Wireless's comment

C&W calls for the publication of non-confidential information collected from operators on the website of the Commission.

ECTEL's Response

ECTEL proposes to review and discuss the issue and concerns around records (disclosure and non-disclosure) with stakeholders before adopting a position in relation to this matter. The disclosure of non-confidential information can be of great assistance to the industry but it should be agreed what information falls within this category.

SECTION 18 – OATH OF SECRECY AND CONFIDENTIALITY

Columbus Communications's comment

Section 18(2) (b) – the industry should be made aware of the fact that an application has been filed or that spectrum has been applied for.

ECTEL's Response

ECTEL will consider the publication of the receipt of an application and information as to which spectrum is already allocated but sees no merit in publishing the name of the applicant or the name of the person or organization to which spectrum has been assigned.

SECTION 19 – MEETINGS

NTRC St. Vincent and the Grenadines's comment

NTRC asked whether the s.19 (8) vote which belongs to the Chairperson also applicable to the Deputy Chairperson or another Commissioner who is presiding over a meeting. S.14 (3) does not appear to allow the powers of the Chairperson to be handed down to a presiding Commissioner other than the deputy.

ECTEL's Response

ECTEL agrees that the intent of the legislation is that the power of the chairperson can only be handed down to the deputy chairperson. This section will be reviewed to allow the Deputy Chairperson the same powers as the Chairperson in the absence of the Chairman.

SECTION 25 – REMUNERATION

Cable & Wireless's comment

The remuneration of Commissioners and staff of the commissioners should be made public.

ECTEL's Response

ECTEL will consider making the salary scales public (on the website) but does not agree that this provision be included in the legislation.

SECTION 26 – FUND FOR USE BY COMMISSION

NTRC St. Vincent and the Grenadines's comment

Numbering fees and application fees are now not listed as funds for use by the Commission.

ECTEL's Response

ECTEL agrees that section 26 (d) be inserted to read; that application fees in respect of licenses and fees in respect of numbering resources be listed as funds for use by the Commission.

NTRC St. Vincent and the Grenadines's comment

Section 26(3) why should the Commission require approval from ECTEL to set up a reserve fund? Would the Commission require ECTEL's approval to obtain loans, grants and funds from parliament? Would the Commission be a corporate body as outlined in s8 with its own standing if this is required?

ECTEL's Response

ECTEL acting on the instructions of the Council of Ministers will delete provisions relating to the establishment of a reserve fund.

SECTION 27 – FINANCIAL YEAR

NTRC St. Vincent and the Grenadines's comment

The Council of Ministers meeting is in October. The time frame of 31st October for the Commission to submit its budget, would be too late. Is it ECTEL's plan to change the budget cycle?

ECTEL's Response

ECTEL will be reviewing the current budget practices and procedures. It is in the interest of all parties to have the same budget cycle for operational reasons.

SECTION 28 – BUDGET AND WORK PLAN

Cable & Wireless's comment

C&W submitted that the Commission should be required to consult with the industry on its work plan, prior to the plan being submitted to Parliament.

DIGICEL's comment

The provision appears to be incomplete and still in draft form. Digicel believes it gives ECTEL a veto over the budget and work plan of the Commission. Further Digicel submits that the budget and work plan of the Commission and ECTEL should be published. TATT does this in T&T.

NTRC St. Vincent and the Grenadines's comment

This section indicates that ECTEL has responsibility for approving the budget of the Commission. This contradicts other provisions in the Bill. All body corporates are responsible for approving their own budgets. The budget of the NTRC comprises other funds; the responsibility for approving its annual budget should be with the Commission. What ECTEL can approve is how much funding it will provide to the budget of the NTRC on an annual basis.

NTRC St. Lucia's comment

The Commission had submitted a paper back in 2012. In general, the paper put forward the views of various NTRCs on how the NTRC, budget should be determined. It encouraged the harmonization of NTRC salaries and ECTEL salaries or the use of a scale. It represented that staff should have permanent jobs. That staff salaries should be tax free. The budget year of ECTEL and the NTRC should be the same. NTRC commissioners should sit on the ECTEL Board. ECTEL should maintain a litigation fund and the NTRCs should have reserved funds. Further consultancies should be done together. NTRCs should not be required to return excess funds from a financial year to ECTEL as this is an unnecessary administrative and accounting burden.

Columbus Communications's comment

The budget and work plan of ECTEL should be subject to industry consultation.

ECTEL's Response

ECTEL suggests that the proposal that the budget and work plan of the Commission & ECTEL be made public should be considered under a separate consultation. Further that in countries where this procedure is used the Commissions are funded by the Operators not from spectrum fees as in the ECTEL Member States.

SECTION 31 – ANNUAL REPORT

Cable & Wireless's comment

C&W states it should be a requirement for the Commission to publish the annual report on its website at the same time it submits it to the Minister and ECTEL.

ECTEL's Response

ECTEL agrees that this is a reasonable request. This will be governed by the rules of statutory bodies.

SECTION 32 – EXEMPTION FROM TAXES

Cable & Wireless's comment

C&W is opposed to this exemption for the Commission and Commissioners.

NTRC St. Vincent and the Grenadines's comment

Is there a reason why staff remuneration of the Commission is not exempt from taxes? This should be harmonized as ECTEL staff are exempt from taxes.

ECTEL's Response

This is a matter for sovereign states. Exemption from taxes for ECTEL staff is based on the Treaty. The position in relation to NTRCs is in the hands of their national parliaments.

SECTION 33 (7) – PUBLIC ACCESS TO RECORDS OF THE COMMISSION

NTRC St. Vincent and the Grenadines's comment

The requirement to publish the names of licensees may lead to the invasion of privacy to publish the address of persons who may be using their address as their business e.g. amateur radio.

NTRC Grenada's comment

Should the Commission publicize information related to frequencies assignment to FAH?

ECTEL's Response

ECTEL notes that by registering the business using a personal address, the business has implicitly made the home address public.

ECTEL agrees that Section 33 (7) (a) be separated; the publication of license, information and the publication of frequency authorizations. The publication of licence information should contain the name address and type of licenses and frequency authorization should contain the name and address. Each register should indicate the status of the license or frequency authorization e.g. whether it has been issued, modified, renewed, revoked, transferred etc. NTRC's should encourage smaller operators to use a postal address should they find themselves inconvenienced by their home address being made public.

SECTION 34 – PROHIBITION ON OPERATING NETWORK OR PROVIDING SERVICES WITHOUT A LICENCE

Cable & Wireless's comment

C&W represented that this ought to apply to OTT applications.

NTRC St. Vincent and the Grenadines's comment

Section 34 (4) are the entities listed under this section required to pay fees in relation to frequency authorization?

ECTEL's Response

ECTEL notes C&W concerns and that Section 7 covers the point raised by NTRC St. Vincent.

SECTION 36 – CLASS AND SCOPE OF LICENCE

NTRC St. Vincent and the Grenadines's comment

Section 36(2) and 36(4) says the same thing.

ECTEL's Response

ECTEL's recommends that Section 36(1) be deleted. By virtue of the deletion of 36(1) (a), 36(2), 36(3), 36(4) and 36(5) will become obsolete.

ECTEL will replace 36(1) to indicate the new license types as follows: (a) individual; (b) class and (c) special licenses.

ECTEL will replace the deleted Section 36(2) with: 'a licensee who holds an individual license is authorized to deploy or operate any facilities based electronic communication network or use scarce electronic communications resources for the provision of electronic communication services in accordance with the license'.

ECTEL will replace the deleted Section 36(3) with: 'a licensee who holds a class licence is authorized to offer those services included in that class license category'.

ECTEL will replace the deleted Section 36 (4) with: 'a licensee who holds a class licence is authorized to provide services as specified in the licence'.

ECTEL will replace the deleted Section 36(5) with: ...' the sub-classes of licenses are as specified in Schedule 2. Schedule 2 will be amended to include a third row for special licence with emergency/exigencies as a sub-class.

SECTION 37 – PROCEDURE FOR GRANT OF A LICENCE

Cable & Wireless's comment

C&W recommended indefinite licences or automatic renewal. C&W also recommended that where a license is refused, the Commission should be made to explain in writing.

ECTEL's Response

It is the Minister who grants or refuses to grant a licence and he is obligated by the Telecommunications Act to provide reasons for refusal. This obligation is preserved in the EC Bill.

NTRC St. Vincent and the Grenadines's comment

Section 37 can be termed an increased and unnecessary regulatory burden. All that needs to be done is to add a provision that will require NTRCs or ECTEL to include a copy of the application when submitting recommendations to the Minister to grant a licence.

ECTEL's Response

ECTEL agrees with the point raised by NTRC SVG. ECTEL has adopted this new procedure in the draft Bill. All applications will be submitted to the NTRC including fees and once a determination has been made, a copy of the application will be submitted along with the recommendation to the Minister.

DUTY IMPOSED ON MINISTER TO RESPOND WITHIN 14 DAYS

NTRC St. Vincent and the Grenadines's comment

Section 37(11) requirement to notify the applicant within 14 days is not practicable. This is additional work for the Minister.

Mr. Anselm Gittens's comment

Mr. Gittens opines that the procedure may become onerous for the Minister. A provision should be made where the Minister, by Order may devolve authority for same to Commission.

ECTEL's Response

ECTEL will, in relation to section 37(11) increase the number of days for the Minister to provide a response to 28 days. The issue of devolving authority to Commission rather than the Minister will need to be addressed within the Treaty or by Parliament.

SECTION 38 – REQUIREMENT FOR A FREQUENCY AUTHORISATION**Cable & Wireless's comment**

C&W represented that this clause was incomplete.

ECTEL's Response

The word 'a' should be removed between the words "use" and "spectrum" in section 38(1).

DICICEL's comment

The penalty for use of unauthorized spectrum is disproportionate to the offence and undermines confidence in the regulatory framework.

ECTEL's Response

ECTEL notes that the clause already exists in Section 29(4) of the current Telecommunications Act (Saint Lucia). Article 11(a) of the Treaty also states "ECTEL shall manage spectrum on behalf of the Contracting State". The penalty is meant to deter the offence.

SECTION 39 – FREQUENCY AUTHORISATION**NTRC St. Vincent and the Grenadines's comment**

Approval of frequency should not involve the Minister. It can be granted by the NTRC following the same process that involves ECTEL currently. In any event a frequency can only be granted to a licensee who holds a licence granted by the Minister.

ECTEL's Response

ECTEL notes that it is the duty of ECTEL to address issues and make recommendations in relation to frequency authorization under the Treaty. The NTRCs concern can only be addressed and resolved by the amendment to the Treaty.

SECTION 40 – MODIFICATION OF LICENCE OR FREQUENCY AUTHORISATION

Columbus Communications's comment

Section 40 (1)(3) –there seems to be a move away from the harmonized approach to regional industry policy and regulations. This clause states that the Commission may consult with ECTEL. In the Telecommunications Act the Commission was to act on ECTEL's recommendations.

ECTEL's Response

ECTEL accepts that the modification of licences and individual licencees in particular, has always been on a recommendation from ECTEL. In relation to Class Licences the Commissions have collaborated with ECTEL when making recommendations to the Minister. This section is to be amended to maintain the need for a recommendation from ECTEL, but also to allow the Commission to make recommendations to the Minister after consultation with ECTEL.

SECTION 41 – TRANSFER OF LICENCE OR FREQUENCY AUTHORISTION

Columbus Communications's comment

Section 41(4) — We note that network licences will be considered by ECTEL and service licences will be considered by the Commission. This change will impact the treaty.

ECTEL's Response

It has not been possible to move to network- licenses and network service licenses. More work needs to be done to ensure clarity. The current regime will therefore be maintained and another consultation undertaken on the licensing regime to determine the way forward.

SECTION 41 – TRANSFER OF LICENSES

Cable & Wireless's comment

C&W requested that this section be deleted due to the Minister's power to refuse a licence in the public interest.

ECTEL's Response

ECTEL notes that the Minister has the general power to protect public interest and national security under the current Telecommunications Act.

DIGICEL's comment

Section 41(1) represented that should the Minister not provide a decision within 90 days when a request for transfer of a licence has been made to him, his failure to respond should mean an automatic approval.

ECTEL's Response

ECTEL does not agree that failure to provide a decision within a 90-day means an automatic approval of the licence.

SECTION 42 – CHANGE OF CONTROL OF LICENSEE OR FREQUENCY AUTHORISATION HOLDER

Cable & Wireless's comment

Section 42(11) (d) - C&W represented that this was too restrictive. The meaning of merger should be clarified and the 90-day rule for notification was questionable for publicly traded companies.

ECTEL's Response

ECTEL agrees that the definition of merger needs to be revisited. Section 42(10) addresses publicly traded companies. The definition of merger has been revised.

TIME LIMIT FOR CONSIDERATION OF APPLICATION FOR CHANGE OF CONTROL

DIGICEL's comments

Section 42 does not place a time limit for consideration of an application for change of control. Digicel submits that an application should be deemed approved if no decision has been issued within 90 days.

ECTEL's Response

ECTEL notes it is always necessary to have a timelimit in order to manage expectations. ECTEL will always attempt to consider an application within a reasonable time. It is therefore not prudent to restrict that period of consideration as the length of time taken to consider an application will be different in each circumstance, depending on the completeness of the application. ECTEL is however committed to providing more certainly within its procedures.

NTRC St. Vincent and the Grenadines's comment

The NTRC is uncertain that this provision will address the recent issues where the holding company shares were sold.

ECTEL's Response

ECTEL has redrafted this section in the hope of capturing the scenario where the holding company has sold its shares, leaving behind a shell company with a licence and spectrum authorization.

NTRC St. Vincent and the Grenadines's comment

The NTRC is not clear that this provision will address the recent issues where the holding company shares were sold.

ECTEL's Response

ECTEL has redrafted this section in the hope of capturing situations where the holding company has sold its shares, leaving behind a shell company with a licence and frequency authorization.

DIGICEL's comments

Digicel submits it is inappropriate to take into account content in deciding change of control as the draft bill does not apply to broadcasting content and content is not a criterion for grant of a licence. Digicel further notes that section 42(5)(d) and (e) and 45(5)(b) are repetitive and should be deleted.

COLUMBUS's comments

Section 42(5)(c) this section appears to address content issues which are not in the Bill and should be excluded.

ECTEL's Response

ECTEL agrees that 42(5)(d) can be deleted as content should not be considered in deciding change of control. However, the issue of content is a critical public interest matter and must be taken into account by the Minister.

THE CHALLENGES OF CHANGE OF CONTROL

NTRC St. Vincent and the Grenadines's comment

NTRC is not sure that the challenges raised by section 42 relating to change of control will be cured by this provision.

ECTEL's Response

ECTEL believes that the requirement for seeking approval for change of control will address the challenges of change of control. This gives the Minister an opportunity to assess how the market will be affected before the change takes place. It is true however that the Act only has jurisdiction over licences within the ECTEL Member States.

SECTION 43 – NOTIFICATION OF CHANGE OF SIGNIFICANT INTEREST

Cable & Wireless's comments

C&W represented that this clause would restrict competition and should include an exemption for publicly traded companies.

DIGICEL's comments

This is an unnecessary intrusion into the commercial freedom of licensees. If a transaction does not amount to a change of control that results in lessening of competition, then no regulatory intervention should be required.

ECTEL's Response

The comments of all contributors have been taken into account. This matter is of great concern to ECTEL and the Regulator as the transfer of shares and significant interest by stakeholders in the past appeared to have been undertaken in a manner which seeks to circumvent regulatory scrutiny. An exemption has been included for publicly traded companies. An offence for failing to notify has also been created.

SECTION 44 –TERMINATION BEFORE OR ON THE EXPIRY OF A LICENCE

NTRC St. Vincent and the Grenadines comment

If a licensee wishes to terminate they should inform the Commission and the Commission will advise the Minister.

ECTEL's Response

The person authorizing/granting or considering an application for surrender of the licence must first receive an application. It has been agreed that for ease of process and to avoid a bottle neck in the system, all applications will be submitted to the Commission. The Commission will consider the application and forward a copy of the application along with its recommendation to the Minister.

SECTION 45 – RENEWAL OF LICENCE AND FREQUENCY AUTHORISATION

Cable & Wireless's comment

C&W seeks automatic renewal.

DIGICEL's comment

Section 45(1) should require the licensee to use the same process as prescribed in section 37.

Digicel views 12 months as too long in advance to apply for renewal of a licence.

Digicel states that in this section ECTEL determines what is in the public interest and this should be done by an elected body not ECTEL.

ECTEL's Response

If automatic renewal is granted after a 15 year licence, the regulator will not be able to assess the financial viability of the company. The current legislation requires a licensee to apply for renewal at least 3 years before the end of the licence. The proposed

legislation has reduced this requirement to 12 months. In relation to the issue of public interest, the law requires the Minister to act on the recommendation of ECTEL.

SECTION 46 – SUSPENSION AND REVOCATION OF LICENCE OR FREQUENCY AUTHORISATION

Cable & Wireless's comment

C&W indicated that this clause needs clarity and should reflect that it relates to fees owed prior to suspension.

ECTEL's Response

ECTEL agrees that 'fees that are due and owing' should be inserted before 'prior to suspension or revocation under this act'.

SECTION 47 – SURRENDER OF LICENCE OR FREQUENCY AUTHORISATION ON REVOCATION

DIGICEL's comment

There is no benefit in denying such an application. The spectrum resource should be returned to the Regulator to allow for its potential reassignment.

ECTEL's Response

ECTEL notes the comment and agrees that the Minister will use good judgment in his or her decision.

SECTION 49 – INTERNET DOMAIN NAME REGISTRATION

NTRC St. Vincent and the Grenadines's comment

NTRC needs proper research on the existing process for assigning domain names. This is not an ECTEL function but a Ministerial function. There are already clear guidelines for this established by ICANN/IANA for the management of domain names.

NTRC Grenada's comment

Section 49- should be replaced with country code top level domains (ccTLD). The Commission will have no control over the wide range of different generic top level domain (gTLD). This section should clearly list the country domain names that should be managed under the Act e.g. Grenada (.gd).

ECTEL's Response

The Bill provides for Commission to manage the process for assigning domain names. It should however be noted that the Commission can delegate such a function to an independent body.

An offence has been created under this section for breaching the Commissions' right to manage and register domain names. However, the Commission can delegate this role to an independent body.

SECTION 50 –TYPE APPROVAL

Cable & Wireless's comment

C&W indicated that the Act should simply provide for permission to grant type approval.

DIGICEL's comment

It is unclear why such a process is required. Type approval is placed on cell phones, which can be bought online or from retailers who do not need to satisfy these requirements, placing operators at a disadvantage. This is proof that the legislation is designed for a bygone era and its approach is outdated.

Section 50(13) – has Saint Lucia typed in. This may be an error and should be (EC Contracting State)

NTRC St. Vincent and the Grenadines's comment

Are networking switches (cisco etc.) captured under this section? If not, why?

Section 50 (13) should not have the name St. Lucia but that of the Member State.

ECTEL's Response

ECTEL notes that Section 50(13) should be ECTEL Member State. The word Saint Lucia will be deleted from the section. It is agreed that the current Bill has been reviewed to make the process clearer. ECTEL agrees that section 50 should be deleted and replaced with a clause that states the Commission should be granted the authority to recognize type approvals granted by other ECTEL Member States or granted by internationally recognized type approval agencies.

PART 4

SECTION 51 – RIGHTS AND OBLIGATIONS OF LICENSEE AND FREQUENCY AUTHORISATION HOLDERS

Columbus Communications's comment

Columbus represented that sections 51,52 and 53 are very onerous. It does not provide balance between promoting service based competition and encouraging continued

infrastructure investment in the sector. They noted in particular section 51(3) which provides that a breach of the relevant provisions is a breach of the licence.

ECTEL's Response

ECTEL notes that section 51, and 52 remain the same as section 50 of the Telecommunications Act. There are no changes to the current legislation.

SECTION 52 – ACCESS TO CABLE LANDING STATIONS

Cable & Wireless's comment

C&W views these as likely to have a negative impact on the expansion and upgrading of international capacity.

ECTEL's Response

ECTEL is of the view that access to international capacity is essential to promoting local competition and keeping the Contracting States abreast and connected to the rest of the world.

SECTION 53 – ACCESS TO OTHER NETWORK ELEMENTS

Cable & Wireless's comments

C&W strongly objects to this clause; stating that this represents access to proprietary and sensitive commercial infrastructure e.g. dark fiber and asked for the provision to be deleted.

ECTEL's Response

It is not uncommon for dark fiber to be shared. ECTEL notes that the sharing of dark fiber is encouraged for example in other jurisdictions such as Canada.

SECTION 54 (4) – ACCESS TO ROAD WORKS

Cable & Wireless's comment

C&W requested that this clause be amended as it seeks only notification and not approval from the Commission for road works.

ECTEL's Response

ECTEL notes that the Ministry of Infrastructure is responsible for granting approval for road works not the Commission.

SECTION 56 – EQUAL AND INDIRECT ACCESS

Cable & Wireless's comment

C&W requested that this clause be amended to take effect only after a public consultation demonstrating the need and impact on the market of such a requirement.

DIGICEL's comment

Digicel represented that the wording of the section is unclear.

Columbus Communications's comment

Columbus represented that if there was no requirement for such facilities there is no need to oblige network providers to make such provisions.

ECTEL's Response

In response to C&W's comment ECTEL proposes that there is no justification for the carrying out of a public consultation where access to a network has been requested. A procedure has been established to deal with request and a consultation of the impact on the market only seeks to obstruct a request for access and stifle competition. ECTEL will continue to uphold its mandate under Article 4 of the Treaty, to promote open entry, market liberalization and competition in telecommunications in Contracting States. The legislation provides for access. Clause 56 has been deleted as the general provisions of the legislation have been deemed adequate.

SECTION 57 – LEASE OF EXCESS CAPACITY ELECTRONIC COMMUNICATION NETWORK INFRASTRUCTURE OR FACILITY

Cable & Wireless's comment

C&W asked "How is excess capacity defined?"

Columbus Communications's comment

Columbus indicated that in section 57, there is no need to legislate the leasing of excess capacity as this should be the purview of business operators.

ECTEL's Response

This section will be titled "Access to alternative infrastructure" in keeping with the definition of "alternative infrastructure". There is no need to provide a definition for "excess capacity" in keeping with international standards no definition for the word has been provided by a regulator or legislator.

SECTION 59 – CONTRIBUTION TO UNIVERSAL SERVICE AND ACCESS FUND

NTRC St. Vincent and the Grenadines comment

This section should be reworded. Universal service fees should be applicable to all licensees. Any entity can provide the services required which could also include training and supply of ICT equipment.

ECTEL's Response

ECTEL agrees that section 59 should be redrafted to allow for Individual licensees to contribute to the USAF. The Minister however, has power under the Bill to exempt any licensee from the provisions of this Bill under section 6 and by Order published in the Official Gazette. This will be the approach to determining which Individual licensees are exempted from making contributions to the fund.

SECTION 60 –INTERCONNECTION

Digicel's comment

Digicel represented that this clause is unfair as competent licensees must provide consultancy services for competitors.

ECTEL's Response

ECTEL will redraft this provision to read that a licensee can provide interconnection on his network to another licensee.

SECTION 62 – COST OF INTERCONNECTION

Cable & Wireless's comment

C&W represented that this cost should be borne only by the party seeking interconnection.

ECTEL's Response

The section will be redrafted to reflect that the cost of interconnection or access shall be borne by the licensee requesting the interconnection or access.

DIGICEL's comment

Section 62(1)

The sentence appears to be incomplete. There appears to be no justification for having the cost of interconnection borne by both parties. In order to do so, Digicel proposes:

- (i) A policy position is established which provides the justification for the departure from the current position where start-up costs are borne by the party requesting interconnection;
- (ii) The Act makes explicit provision for the recovery of apportioned start-up cost through user rates; and
- (iii) Regulators specify the exact process by which such costs are to be recovered.

ECTEL's Response

The current provision under the Telecommunications Act that the cost of interconnection should be borne by the party requesting interconnection or access will remain.

SECTION 65 –SPECTRUM

Cable & Wireless's comment

C&W requested that this section to be moved closer to section 39.

ECTEL's Response

ECTEL notes the suggestion of C&W but will be guided by the advice of the drafter.

SECTION 66 – ROAMING

NTRC St. Vincent and the Grenadines comment

The specific laws should be identified as it relates to international rules as we assume the regional rules will be developed under the Act.

ECTEL's Response

ECTEL is currently undertaking research and will be developing a draft Roaming Bill and regulations for submission to the stakeholders for consultation.

SECTION 67 – NUMBERING

DIGICEL's comment

This requirement to pay numbering fees may be inconsistent with number portability, as the benefit of ported out numbers accrues to the post porting host network.

Also, what benefit do providers accrue from the numbers as OTT operators can use the numbers without paying the fee.

Columbus Communications's comment

With the expansion of the scope of the legislation increased to cover electronic communications, the scope of numbering also increases. Numbering will now include telephone numbers, IP addresses, domain names, customer premises equipment identifiers etc. The section should be amended to cover the range of identifiers.

ECTEL's Response

ECTEL agrees that the number portability system can be used to include the porting of many other items apart from numbers. An operator retains ownership of a number even after it has been ported. The benefit that accrues to operators by the use of their numbers as identifiers is network externalities.

SECTION 68 –TARIFFS

Cable & Wireless's comments on (s68 (3) (a)- Tariffs)

C&W represented that tariffs should not be printed in hard copy as they are constantly changing and the paragraph should be deleted.

ECTEL's Response

ECTEL agrees that section 68(3)(a) should be redrafted so that it is not mandatory for providers to publish hard copies of directories. Various options will be given such as publication on their website, or placing a copy of the tariffs at its place of business.

SECTION 69 – CONSUMER CONTRACTS

DIGICEL's comment

The proposed obligations are not workable. Further section 69(2) entitles the Commission to determine whether a proposed contract change may be materially detrimental to consumers. This appears to introduce an approval process for contracts.

ECTEL's Response

ECTEL notes that one of the functions of the Commission is to protect consumers, hence the provision is deemed necessary.

SECTION 70 – PRIVACY AND CONFIDENTIALITY

Cable & Wireless's comment

C&W represented that the clauses in this section are unclear and appear to contain errors.

Columbus Communications's comment

Privacy and confidentiality needs to be supported by appropriate companion legislation.

DIGICEL's comment

- (i) This section distorts competition in the market as App operators regularly collect information such as location and cookies. However, it places constraints on licensed providers.
- (ii) Obligations should be imposed in a technology neutral manner through general rather than license specific legislation.

ECTEL's Response

This section has been redrafted to give it better flow. In relation to data collected by OTT operators, please note that this will form part of a separate consultation on OTT services.

SECTION 71 – BILLING

Cable & Wireless's comments on (s. 71(2))

C&W seeks to have enshrined in law the right to charge for paper bills once electronic ones have been provided.

ECTEL's Response

This provision/suggestion has already been rejected by the Ministers on the grounds of public interest, since only a fraction of the population has internet access.

SECTION 71(4) GIVING CUSTOMERS NOTICE INFORMING THEM OF REASON FOR INTERRUPTION OR DISCONNECTION

NTRC St. Vincent and the Grenadines's comment

- (i) This section needs more clarification. It should state when the customer is expected to receive the written notice. Is it before or after service is interrupted?
- (ii) The billing period should be specified as to when it starts and ends.

ECTEL's Response

ECTEL agrees that section 71(4) needs to be reworded to include the expected date of receipt of the written notice by the customer.

SECTION 72 – COMMUNICATIONS DURING AN EMERGENCY

Cable & Wireless comment on (S.72(1), (6))

C&W states that Head of state should be replaced by the Prime Minister as with the exception of Dominica, the Head of State in ECTEL Member States is the Governor General.

NTRC St. Vincent and the Grenadines comment

Should it refer to Head of State or Head of government?

Anselm Gittens's comment

Provision should be made for another Head of State from another Country to assume direct control in the instance where the Head of State may be unable to perform his duties.

ECTEL's Response

This matter will be left to be determined in each Member State. ECTEL agrees that there is need to ascertain who declares an emergency under the laws of the state.

ECTEL notes that the laws that gives power to the head of State should make provision for dealing with communications during an emergency in his/her absence.

SECTION 73 – GENERAL COMPETITION PRACTICES

Section 73(3) (c) - General Competition Practices

Cable & Wireless comment on (s73(3)(c)

C&W requested that this section be deleted as the Commission only has power to investigate a breach within its jurisdiction.

ECTEL's Response

Section 73(3) refers to publication by the Commission of ECTEL's recommendation of guidelines which clarify the meaning of substantial lessening of competition in ECTEL Member State electronic communications market. It does not concern any investigation of breaches. One of the major objectives of the Treaty is to "promote open entry, market liberalization and competition in telecommunications. The draft Bill provides amongst the functions of the Commission to "promote, maintain and encourage competition in electronic communications" Accordingly competition relating to the electronic communications market is within the jurisdiction of the Commission. All ECTEL Member States are party to the Treaties establishing the CARICOM Single Market and Economy and are part of the OECS Economic Union. Each jurisdiction is therefore bound by the rules and laws enforceable under these regimes. Therefore, this requirement is not outside the legal jurisdiction of the Commission.

Cable & Wireless comment on (s. 73(6))

C&W asserts that a new section 73(6)(3) should be added to say that a licensee simply responding to the competition or meeting the competition should not be viewed as anti-competitive.

ECTEL's Response

C&W's concern in relation to this matter appears to misinterpret the purpose of the clause. This may result in a race to the bottom if what is being done by the other competitor is anti-competitive and under investigation. Such matters therefore needs to be assessed on a case by case basis (except in the case of a formal trade association). In principle no exclusion should be allowed. The provision will remain.

SECTION 73 (8) (F) MEANING OF ESSENTIAL INFRASTRUCTURE

Cable & Wireless commnets

C&W requested a definition for "essential infrastructure"

ECTEL's Response

A definition will not be provided for "essential infrastructure" due to the extensive literature and jurisprudence on the issue. Section 73(8)(f) is the same as Section 177(2)(f) of the Revised Treaty of Chaguaramas and the Treaty does not define "essential infrastructure".

DIGICEL's comment

Digicel is concerned by section 73 as it appears to abrogate the role of courts, parliaments and constitutions. It proposes restrictions which are unnecessary to maintain competition. A number of concepts appear confused. It requires revision to comply with international best practice.

The NTRCs and ECTEL cannot be expected to carry out all that is expected of them by the wording of this part e.g. market review and competition law enforcement which require high staffing levels.

Digicel suggest instead building on the Price Cap plan by adding the range of regulatory remedies that may be imposed whilst further thought is given to how a market review/remedy might operate in practice.

A look can be taken at Articles 101 and 102 of the Treaty on the Functioning of the European Union and insert those competition provisions into the EC Bill rather than the current wording.

In relation to s 73(1) - Digicel states: that this may be unconstitutional as it appears to exclude the courts. It is also unspecific as to what constitutes a competition law and this creates legal uncertainty. Also "electronic communications market" is not defined.

Section 73(2) – Digicel submits that it is discriminatory to apply a legal provision to one set of persons (licensees) and not to others.

Sub-Section 73(3) (a) (b) (c) – appear to Digicel to give the Commissions and ECTEL the ability to write the law without reference to national parliaments. This is unconstitutional.

Sub-Section 73(4) – Digicel states that the meaning of this provision is unclear. Digicel suggest that the wording be changed to that used in other jurisdictions.

Sub-section 73(5)- Digicel states it is unclear to them why this provision is necessary as 'exclusive rights' are not defined. In certain circumstances exclusive arrangements can promote competition.

Sub-Section 73(6) – this wording is closely aligned to EU TFEU. Digicel suggest that the working regarding anticompetitive agreements is also made in line with the TFEU.

Sub-section 73(7) – Digicel states that it is not clear what an ‘essential facility’ may be. That it is unnecessary and problematic to seek to establish a broad concept of ‘essential facilities’ in legislation. Access of obligations of licence holders should be clearly identified. The words ‘technical information’ and ‘commercially relevant information’ are also unclear. These terms are open to abuse and the bill excludes the role of the courts by establishing the Commission as having exclusive competence in this field.

Sub-Section 73(8) - the definition of ‘anti-competitive business conduct’ is too restrictive as it seeks to prohibit activities that promote competition. This sub-section should make clear that an anti-competitive agreement is an agreement between competitors as it cannot be wrong for a business to set its own prices.

Further **section 79** of the draft bill also addresses the same issue as s73(8) and Digicel asked whether sub-section 73(8) is necessary.

Sub-section **73(8) (f) to (j)** may only be problematic if undertaken by entities that are dominant in certain relevant markets.

Further Digicel is troubled by the use of the phrase ‘unauthorized denial of access’ in 73(8)(f). The commission appears to have power to deny commercial conduct of commercial entities.

Subsection **73(8)(h) and (i)**, ‘loyalty discounts’ are not anti-competitive practices per say. These are general commercial practices.

Subsection **73(8)(j)** – Digicel is unaware of the meaning of “exclusive vertical restriction” it notes that ‘exclusive vertical arrangements’ may promote competition.

A definition of ‘anti-competitive merger’ is contained in 73(8) but not used anywhere else in the draft bill.

NTRC St. Vincent and the Grenadines’s comment

Section 73 (8)(h)(i) – NTRC does not see why loyalty discounts are listed as non-competitive conduct.

Columbus Communications comment

Section 73 (1) - questions the efficacy of the position as handling competition matters requires specialized skills and competencies, which do not normally reside within the Commission.

Section 73 (7) (d) is not clear. Columbus disagrees with the position to include loyalty discounts as anti-competitive, with no qualifications such as economic tests to verify that specific discount scheme is aimed at foreclosing competition.

ECTEL's Response

The comments here by Digicel are much too general to be responded to. The additional responsibility and the need for resources placed upon ECTEL and the NTRC's by the draft EC Bill is a matter for the Regulator. The suggestions put forward have been addressed as the draft Regulations describe a range of remedies that may be imposed. These remedies have been applied in other markets and extensive experience with their operation in practice is available. As ECTEL Contracting States belong to CARICOM and not the European Union it is more appropriate to use as reference the Revised Treaty of Chaguaramas establishing the Caribbean Community including the CARICOM single market and economy. The competition provisions from this instrument have been preferred here.

ECTEL proposes that the concerns raised by Digicel to section 73(1) can be addressed by changing the wording of that section to read "Without prejudice to the competence of any court, of the National Competition Authority or the Competition Commission established in accordance with the Revised Treaty of Chaguaramas establishing the Caribbean Community including the CARICOM Single Market and economy, the Commission shall have competence to determine, pronounce, upon administer, monitor and enforce compliance of all competition laws whether of a general or specific nature, as it relates to [Name of Member State] electronic communications market."

In response to Digicel's comment on section 73(2) it is submitted that this clause does not mean that the prohibition on anti-competitive practices is not applied to undertakings in other sectors but such application is not within the scope of the draft Bill.

Digicel's assertion that ECTEL and the Commission are given power to write law in section 73(3) (a) (b) (c) is misguided. Guidelines are not law. They explain the law; they do not create new rules rights or obligations. Further section 73(4) is represented by Digicel as being unclear. The provision is founded on section 177 (3) of the Revised Treaty of Chaguaramas. However it will be amended as follows: "subject to sub-regulation (6) below, the clauses, agreements and commitments generally having the object or effect of restricting, or limiting competition are null and void. Section 73(2) will also be amended to obtain a similar effect as follows: "subject to sub-regulation 6 below a licensee shall not engage in any anti-competitive business conduct, namely which has the purpose or effect of substantially lessening competition in any aspect of [Member State] electronic communication market."

Section 73(5) Digicel asserts that such arrangements may have positive effects. This is true and the section has been worded to recognize this as it states: "A licensee shall not

be treated as engaging in anti-competitive conduct if it establishes that the activity complained of (a) contributes to (i) the improvement of production or distribution of goods and services, or (ii) the promotion of technical or economic progress, while allowing consumers a fair share of the resulting benefit;" Digicel's concern has therein been taken into account.

In relation to section 73(6) this section is sculpted from the Revised Treaty of Chaguaramas which is closely aligned to the TFEU. Digicel's concern has also been addressed here.

In response to the concerns raised by Digicel in relation to section 73(7), the section will be modified as follows: "A licensee shall not (a) refuse to make available in a timely manner to other licensees, technical information about facilities and commercially relevant information necessary for the exercise of their activity;" This means that the Commission will no longer have exclusive competence in competition law. Section 73(8) has also been closely aligned to clause 117 of the Revised Treaty of Chaguaramas. Nothing in this clause prevents operators from fixing their own price subject to not infringing the rules of section 73. It is the view of ECTEL that section 79 is necessary as it explains section 73(3) and section 73(8) and is not the same as 79 and all three sections are necessary. In response to the comments made by Digicel with reference to section 73(8)(f) and (j) the Commission seeks only to ensure that the actions of Licensees do not violate the competition provisions or amount to anti-competitive conduct. Section 73(8) (h) and (i) concerns about loyalty discounts are accepted and Loyalty discounts will be allowed under the provisions of the draft legislation. Digicel raised that it is unaware of the meaning of "exclusionary vertical restrictions". This term is used in the Revised Treaty of Chaguaramas to mean "contractual arrangements or informal business relationships between vertically related firms that impair the competitiveness of either the upstream or downstream market" The representation made about the use of the word "anti-competitive merger" contained in section 73(8) has been noted and the term will be deleted. The Concerns of the NTRC and Columbus have been addressed within these responses.

SECTION 74 – ABUSE OF SIGNIFICANT MARKET POWER (SMP)

DIGICEL's comments

Refers to abuse of SMP and section 78 introduces the concept of an assessment of dominance. Digicel queries whether the use of both concepts is necessary.

Further Digicel asserted that the words 'preventing, restricting or distorting competition in the market' used in section 74 is usually used for agreements between competitors. In sub-section 74(2) it is unclear what the Commission can take into account.

ECTEL's Response

ECTEL agrees that 'dominance' should be replaced with 'SMP'.

ECTEL notes the comment but asserts that this does not preclude the use of the words 'preventing, restricting or distorting competition' in the manner in which it has been used. Further that restriction of competition does not always arise from an agreement between operators – competitors or not.

ECTEL notes the comment in section 74(2) from Digicel that the section is unclear. However, Article 179 of the Revised Treaty of Chaguaramas defines and gives examples of abuse of dominant position. The section will be amended as follows: "Without prejudice to the generality of the foregoing, in determining whether a licensee has abused its significant market power, the Commission shall take into account the provisions of the Revised Treaty of Chaguaramas establishing the Caribbean Community including the CARICOM Single Market and Economy and its further amendments by the OECS Economic Union."

SECTION 75 - NON-DISCRIMINATION

DIGICEL

This section is overly prescriptive and prevents differentiated retail offerings, which is the norm in the telecommunications industry across the world. Digicel asked that this clause be deleted as it hampers competition.

Columbus Communications

The clause is not in keeping with general competition principles.

They submit that this section incorrectly applies the competition policy of non-discrimination. Columbus opined that the correct application is provided in section 76 and should be used consistently in the document. Also, dominance should be a precondition for discrimination. Columbus suggests that the definition of discrimination be revised to curtail certain abuses to situations where dissimilar conditions are applied to equivalent transactions of similarly situated customers.

ECTEL's Response

The objective of section 75 is not to prevent differentiated retail offering. However, for the sake of clarity, the section will be amended as follows: "A licensee shall not discriminate between persons who are in an equivalent situation and who acquire or make use of an electronic communication service in the market in which the licensee operates in relation to (a) (b) and (c)......"

In response to Columbus's comment ECTEL notes that section 75 and section 76 refers to 2 different situations: (1) Discrimination applied to equivalent transactions of similarly situated customers section 73(8) (h). Secondly discrimination where vertically integrated operators give more favourable conditions to their own services, subsidiaries or partners on the upstream market than their competitors on the downstream market.

The first situation is a prohibited practice for all operators without the need for a finding of dominance. The second position requires a prior finding of dominance.

SECTION 76 – OBLIGATIONS OF LICENSEES HAVING SIGNIFICANT MARKET POWER (SMP)

Cable & Wireless

C&W is opposed to this section in particular “Irrevocable rights to use optical fiber or provide unbundled access to the local loop.”

C&W represents that this section goes too far and should be deleted as it amounts to ECTEL and NTRC being empowered to expropriate the network of an SMP.

Section 76(iv) C&W once again reiterates that this provision compels operators to grant access to their intellectual property.

ECTEL’s Response

Section 76(4) provides that ‘In assessing the proportionality of the obligations it is likely to impose on a licensee having SMP, the Commission shall take into account the following criteria.....’ one of which is (d) any relevant intellectual property rights. Operators are asked to reevaluate the sections objected to above.

DIGICEL

Digicel noted that the remedies in section 76 are similar to the remedies provided for by EU electronic communications regulatory framework. Digicel is of the view that this is not the correct approach for the ECTEL region as it will overburden the NTRCs.

ECTEL’s Response

Digicel’s observation that EU provisions should not be adopted here as they are not relevant is noted. However, ECTEL also notes that Digicel has in other areas of the consultation document encouraged the use of EU provisions. The aim of ECTEL is to adopt procedures which represent international best practice and are appropriate to meet the needs of the ECTEL Contracting States.

INJUNCTIVE RELIEF

Sub-section 76(3) and (6) provide for injunctive relief under section 98. This appears to be an error. The correct section is section 99.

ECTEL’s Response

This error is noted and injunctive relief now appears as section 96. It should be noted that the sections referred to in the draft Bill are likely to change as the Bill is revised before promulgation.

SECTION 77 – MARKET ANALYSIS

Cable & Wireless

C&W would like market analysis to be published on the Commissions website.

DIGICEL

Any assessment should be whether or not a relevant market is 'effectively competitive'. This is the EU approach. What is meant by 'not competitive situation'. The NTRCs will not be able to do this every 3 years. This is the wrong approach for ECTEL States. It is too rigid; it will hamper local operators in their battle with unregulated internet companies.

ECTEL's Response

The representations by C&W are noted. Subsection 77(5) will be deleted due to the modification of guidelines in Regulations. ECTEL will shortly be doing a consultation on OTT's which will look at the question or challenges of regulation, during the course of which Digicel may make further representations on this matter. However, for the moment, ECTEL is not seeking to regulate OTT operators.

SECTION 78 – ASSESSMENT OF DOMINANCE

Cable & Wireless

C&W pointed out that there is an error in the section which causes confusion. Further that dominance and SMP should not be used interchangeably.

DIGICEL

Assessment of dominance should be replaced with a prohibition on abuse of dominant position similar to article 102 of the TFEU. The process for assessing SMP and the concept of SMP should be removed from the draft bill.

Further in section 78 Digicel agrees with provision for a prohibition on anti-competitive agreements but notes that there is an error in the text. The words ...'including an agreement, arrangement or understanding for an acquisition' should appear in subsection (1) whilst subsection (a) should begin with the words "which has the purpose or has...."

Digicel indicates that it is not familiar with the concept of 'reasonable allowance' and proposes that this is to address the excesses of section 75. It proposes that sections 75 and 80 be deleted.

NTRC St. Vincent and the Grenadines

78(2)(e)- 'the' is duplicated.

ECTEL's Response

Section 78(1) will be amended to substitute 'Commission guidelines' with 'Regulations'. The section should now read: "The assessment of the ability of a person to behave to an appreciable extent independently of competitors, consumers must be made using published criteria into the appropriate Regulation". Any errors in the document will be looked at for rectification.

In response to Digicel, ECTEL states that the assessment and prohibition of abuse of dominance is an ex post measure based on common competition law. Assessment of dominance is the second step of a market analysis that could result in the imposition of remedies on SMP operators. This is ex ante regulation. ECTEL does not accept the deletion of sections 75 and 80 as suggested by Digicel.

SECTION 81 – POWERS OF COMMISSION UNDER THIS PART

DIGICEL

Section 81(1) - Digicel submits that sub-sections 81(1) (c) to (f) should be deleted. That sub-section (c) refers to the concept of SMP operators; a concept with which Digicel does not believe should be included in the draft bill.

Digicel does not believe that the NTRC should be empowered to make orders as contained in ss 81(1)(d) and (e). This they submit should be a matter for the courts. Digicel states that it does not understand ss. 81(1) (f).

Section 81(2)(a) to (c) - Digicel submits that this section should be deleted as it is not anti-competitive but in fact is evidence of competition. It however allows intervention where there is no market failure.

Section 81(2)(d)- Digicel states - provided promotional offers do not constitute a breach of the competition provisions this section appears to be regulation for the sake of regulation and should be deleted.

ECTEL's Response

Section 81(1) (c) will be amended to remove reference to SMP as follows: "recommend the suspension or revocation of the licence of the licensee".

SECTION 82 – CONSULTATION WITH THE COMPETITION BODY

DIGICEL (s 82 (2) & (3))

Digicel submits it does not oppose consultation with other regional bodies. The Commissions must have regard to the confidential and proprietary information in their possession. It is not open to them to transmit such information to other organizations in the other jurisdictions without the consent of the party to whom the information belongs. Section 82(3)- Digicel submits- this clause is unconstitutional.

ECTEL's Response

ECTEL proposes to amend section 82 as follows: "(1) Where an investigation by the Commission involves anti-competitive business conduct which has the effect of lessening competition in the relevant market in [Member State] the Commission may consult the Competition body established in [Member State] (2) In consulting with the Competition body, the commission shall send all documents relevant to the investigation given that the Competition body is subject to the same confidentiality obligations regarding trade secrets as the Commission."

SECTION 83 – UNIVERSAL SERVICE

DIGICEL

Digicel referred to its previous comments on universal service as it is of the view that the imposition of universal service should not be automatic. Rather it recommends that measures be taken to spur the degree of competitiveness in the market and for competition to be the driving force for the attainment of access targets.

For universal service to be achieved effectively:

Digicel proposes:

- There should be a transparent and non-discriminatory interconnection framework in which interconnection rates are driven by cost.
- The total regulatory and investment burden on licensee must be reduced to lower the cost of providing service to end-users;
- Competition must be promoted in the provision of full range of not only core telecom services but also in relation to ICT services to increase access, affordability and use of ICT services.

NTRC St. Vincent and the Grenadines

This section may need to be reworded to allow for different fees per different types of licences. The same rate should apply to all licences of a specific type but not the same fee for all licensees regardless of type.

Section 83(8)

Why are there functions for the position of USF Fund Administrator in the Bill and the same is not true for the position of CEO. Why have provisions from the regulations been placed into the Bill? The Minister can amend the regulations not the Act.

NTRC SVG does not support s83(8) as worded as it is not clear who the USF administrator reports to. This will lead to governance issues.

ECTEL's Response

ECTEL notes Digicel's comments in relation to the obligation to pay USF. ECTEL is also in the process of reviewing interconnection rates and stakeholders will be given an opportunity to comment and participate in the process.

In response to the concerns raised by NTRC SVG, with regards to section 83(8) ECTEL believes that the reporting lines are clear. ECTEL will however consider including functions of the CEO under s. 15 of the draft bill. The provisions lifted from regulations into the Act are considered substantive provisions and rightly belonging in the parent legislation.

PURPOSE OF UNIVERSAL SERVICE AND ACCESS FUND

Section 84

NTRC St. Vincent and the Grenadines - s84(2)

As worded conflicts with the intention to allow non-licencee to receive funds from the USF, by stating "*....and the conditions attached to the licence*"

ECTEL's Response

ECTEL notes the adjustment which needs to be made to this claim (after regulations delete; 'and under conditions attached to the license').

PART 7 - OTHER OFFENCES

Section 85

C&W indicated that there was no section in the bill identified as the offences section, therefore, the wording here should not be other offences.

ECTEL's Response

Although there is no provision entitled offences, offences are mentioned throughout the legislation and there is no inconsistency in referring to this section as other offences.

INTERFERENCE [INTERCEPTION] OR DESTRUCTION OF NETWORK

Section 86

NTRC Grenada

"intercept or interrupt" in s.s.1 (b) should be clearly defined under s. 2 to avoid ambiguity to the readers.

This section should also be compared or revised with the "Interception of Communication Act No. 22 of 2013" that is gazette in Grenada.

The EC Bill made mention about a Mobile Virtual Network Service Operator licence, the NTRC recommends that a MVNO regulatory framework should be developed, similar to the framework developed for interconnection to avoid disputes.

ECTEL's Response

The definitions provided in the Interception of Communication Act No: 22 of 2013 has been taken into account and incorporated into the definition to ensure consistency.

SECTION 87 & 89 – DISCLOSURE OF PERSONAL INFORMATION

DIGICEL- Section 87 and 89 - it is not necessary to increase the penalties. The penalties under Telecoms Act are sufficient.

Section 87- disclosures should be limited to court orders only.

Section 89 goes against the notion of a right to silence.

ECTEL's Response

There was great need to increase the penalties under the Telecommunications Act as the lack of penalties gives no redress to the Regulator.

However, ECTEL agrees that disclosure should be made only based on consent and court disclosure. ECTEL agrees that the definitions of interception and interruption must be clearly defined in light of legislation in some Member States for example the Interception of Communications Act in Grenada.

SECTION 90 – CROSS SHAREHOLDING

C&W proposes that this section be deleted as it is unnecessary as the Commission could address any impacts in the public interest. Further it unduly restricts the ability of operators to structure their operations in the most efficient manner.

DIGICEL

Section 90 is not compatible with section 42.

ECTEL's Response

ECTEL recommends that section 90 remains as it is necessary for the avoidance of doubt. Section 90 and 42 are not incompatible as the sections represent two different scenarios.

SECTION 91 – HARMFUL INTERFERENCE TO FACILITY OR TERMINAL EQUIPMENT

DIGICEL views this as unfair as only licensed operators are being punished. A cruise ships which causes interference are not being charged.

ECTEL's Response

Cruise ships are required to turn off their transmission equipment 12 miles from the port. Failure to do so may lead to them being charged. The Commission is also empowered to direct them to stop such interference.

SECTION 92 – FAILURE TO COMPLY WITH DIRECTIONS

Failure to comply with Directions being a breach of licence

C&W suggested that this be excluded from the section.

ECTEL's Response

ECTEL recommends that section 92(2) be made an offence similar to 90(2). The failure to comply with directions should amount to an offence as to do otherwise would render the Regulator's directions null and void.

SECTION 93 – BREACH OF CODE OF PRACTICE

C&W views this as punitive and unreasonable as it equals the licensing fees paid by operators. They challenged the use of such a punitive measure for breach of a Code of Practice stating that such punishment is reserved for breaches of an Act or subsidiary legislation not Codes of Practice.

DIGICEL

Digicel represents that section 93 is not acceptable. It is unclear what may be contained in a Code of Practice. Secondly, they state that the section gives the Commission the power to effect a criminal sanction; and thirdly, the fine is disproportionate to the breach.

Columbus Communications

Columbus considers the penalty for breach to be very harsh. They believe that penalties should be proportionate to the offence and there should be a graded list of remedies that is based on the severity of the impact of the breach.

The Act should set out a process which provides licensees with an opportunity to present their views, where a breach is alleged. Licensees should be allowed time to remedy the breach before final action is taken.

ECTEL's Response

ECTEL adopts the views presented here and the section will be amended to reflect that a breach of a Code of Practice may be admitted in proceedings, where they are relevant to any issue under consideration and shall be taken into account.

SECTION 94 – LIABILITY OF BODY CORPORATE

C&W suggests that any officer should be held liable and not just the persons mentioned in the section.

DIGICEL views s94 as an unbalanced and discriminatory approach, as these penalties apply to licensees and not other operators.

ECTEL's Response

The clause sought to identify and hold responsible those persons with decision-making ability, who could have prevented the breach. The clause will be amended by deleting "managers and supervisors" as such persons are viewed as acting on instructions and not as decision-makers.

PART 8

SECTION 95 – INVESTIGATION AND WARRANT ON SUSPECTION OF CONTRAVENING SECTION 34

Cable & Wireless

C&W suggested replacing this section after section 34. They indicated that the section suggests that it is only on breach of section 34 that the Commission can establish an investigation, which is wrong. They have not pointed out on which other occasions.

DIGICEL submits that section 95 should be extended to persons outside the jurisdiction offering services to consumers in the jurisdiction.

ECTEL's Response

The section will be amended. The words "any provision under this Act" will replace section 34. In response to Digicel, ECTEL is only authorized to regulate operators within its borders.

SECTION 96 – INVESTIGATION OF BREACHES

DIGICEL

DIGICEL submits that sections 96 and 97 should apply to any person and should not be limited to licensees.

ECTEL's Response

The Act can only be breached by a license or frequency holder and the penalties for breaches of licenses are already dealt with under the Act.

SECTION 100 – COMPLAINTS

Cable & Wireless (s. 100(2))

C&W recommended the following drafting be inserted into that section:

- "2(a) subscriber to the service*
- (b) members of the public affected by the service*
- (c) a retail customer*
- (d) a landlord affected by the work of the licensee."*

NTRC St. Vincent and the Grenadines

How does this fit in with the current dispute resolution rules? The process for resolving disputes should be as set out in the Dispute Resolution Regulations, which has timeframes etc. A new tribunal will not work.

ECTEL's Response

ECTEL agrees with the suggestion made by C&W in relation to 2 (a), (c) and (d) and the section will be amended with these suggestions in mind. In response to NTRC SVG, the current Dispute Resolution Regulations will be amended to coincide with the amendments made in the EC Bill. ECTEL has amended the Dispute Resolution regulations. ECTEL has conducted a consultation on the Dispute Resolution regulations and the results of this consultation used to update the regulations.

SECTION 104 – DISPOSITION OF COMPLAINTS

Cable & Wireless

C&W indicated that the Commission should be empowered to hear complaints and resolve them; not just hear and refer them to others.

ECTEL's Response

The Complaints section of the EC Bill gives the NTRCs the power to receive, investigate, hear and direct complaints. The previous provisions did not separate the investigative powers from the determinative or judicial powers. The EC Bill seeks to do so, thus resulting in a more transparent process. This is why the Commission's authority under the Bill is to receive, investigate, record matters settled by consent. Matters which have not been settled by consent will be submitted to the appropriate bodies for determination after consultation with the parties and with their agreement.

SECTION 105 – FRIVOLOUS COMPLAINTS

Cable & Wireless

C&W suggested that this should be in the regulations not in the parent Act.

ECTEL's Response

ECTEL notes the observation of C&W. However, this section will remain in the parent legislation as it represents a binding and standard principle.

SECTION 111–113 – ESTABLISHMENT OF TRIBUNAL

Sections 111, 112, 113- Matters relating to Tribunals Cable & Wireless

C&W felt that a tribunal was not necessary to hear customers' complaints. All complaints should be resolved between the operator and the Commission. It is an expensive set up and should be deleted.

DIGICEL

DIGICEL submits that all of **Part 9 - Section 111-126** the establishment of a Tribunal should be deleted. It is a heavy handed approach to regulation. It is out dated, costly and the current methods are adequate

ECTEL's Response

The Tribunal incorporates a more transparent process for both the consumer and the operator. Licensees should first seek to resolve complaints between themselves and customers. This is provided for in the new Consumer protection Regulations. However, if the matter is not resolved, the customer or the Licencee may refer the matter to the Commission. If the Commission is unable to get the parties to come to consensus on the outcome, it may refer the matter to an appropriate body including the Tribunal for determination. Thus, licensees are given an ample opportunity to resolve matters with customers before the tribunal is use as a method of determination of a complaint.

SECTION 126 – CONTINUATION OF SERVICE DURING COMPLAINT PROCESS

Cable & Wireless

C&W asked for clarity of the clause so that it clearly represents that it is the service of the customer which cannot be disconnected during the complaint period.

ECTEL's Response

It is the service of the customer which is not to be disconnected during the complaint period. This time frame is not without limit. The Consumer Protection Legislation sets a time limit on this issue. ECTEL wishes to advise that the Consumer Protection Regulations have been publicly consulted upon as part of the CARCIP consultations.

SECTION 127 – MISCELLANEOUS

Part 10 - Miscellaneous (Fees)

Cable & Wireless

C&W states that there is no consistency about how funds are to be paid or distributed and that this is arbitrary and may be unconstitutional.

NTRC St. Vincent and the Grenadines

NTRC SVG is not in agreement with these changes to s. 127

NTRC Grenada

NTRC Grenada states that **s. 127** makes no mention of fees related to Domain Names and recommends that this fee should be included under this section and shall form part of the revenue of the Commission.

Further, **s.127 (3)** is not in support of the numbering resource being part of the revenue of ECTEL. [Name of person who made the comment] recommended that numbering, domain name, and application fees be part of the revenue of Commission and not ECTEL.

ECTEL's Response

The Treaty provides guidance on fees. The Act will now provide further clarity. In response to NTRC SVG, ECTEL notes that in the current Telecommunications Act, there are no provisions for fees so the inclusion of this section is necessary and is consistent with current good practice.

ECTEL will now make provision for numbering fees to be assigned to the NTRCs. In relation to domain name fees, ECTEL will consult with the Council of Ministers to determine the allocation of fees for domain names.

The Commission is given the charge to establish and manage domain names under section 49 of the consultation documents. It also has power to the extent reasonably required to assign the management of domain names to another entity/body to manage. The Commissions are also responsible for implementing and administering the national plan. The draft Bill will therefore ensure that clarity is provided in relation to the fees received by the Commission. As not all fees received by the Commission are the property of the Commission, the provisions of the Bill will address the fees which are to be retained and the correct recipients of the other types of fees. These changes to the legal framework will provide clarity, transparency and accountability.

SECTION 129 – STOPPAGE OF ELECTRONIC COMMUNICATIONS

DIGICEL

DIGICEL notes here that the power to stop communications, which are against national security and public interest has been given to the Commission.

NTRC Grenada

This section appears to be in contravention with s.5. The manner of determining whether electronic communication is contrary to public order or decency has to deal with content and therefore s.5 should be modified to ensure that the requirement of s.129 is met.

ECTEL's Response

This section is a rewording of section 69 of the current Telecommunications Act. The original language is used but is now represented in section 129 of the Bill. The intent is not for the Commission to physically stop the communication, as suggested by Digicel, but once the communication comes to the attention of the Commission, it may give a Direction to the licensee to stop it. The licensee is also under an obligation to stop any such communication or to notify the commission of any such communication, which it have stopped or intends to stop.

In response to NTRC-Grenada, the Act makes an exception for content which is contrary to public order or decency or national security. The legislation gives specific instructions in relation to such content.

SECTION 131 – PERMISSION UNDER OTHER LAWS

Cable & Wireless

C&W indicates that the permission which is required needs to be stated.

ECTEL's Response

In transacting business, permission may be required for several aspects of a commercial transaction. The Telecommunications Act does not regulate content, but if licensees require permission for content or other matters from other authorities other than the telecommunications regulator in order to provide a proposed telecoms service; this Act does not prevent the provider from obtaining that permission.

SECTIIION 134 – REPEAL AND SAVINGS

Cable & Wireless – s.134(3)

C&W states that regulations should not create offences and this provision may be unlawful.

ECTEL's Response

ECTEL notes the comment and suggests that a general penalty clause be included in the Bill to address such matters.

SECTION 134 (4) USE OF DOMINANCE AND SMP

Cable & Wireless

C&W submits that this provision is inappropriate and that dominance and SMP should not be used interchangeably.

ECTEL's Response

It is important for the sake of clarity that those who use the legislation understand that dominance has been replaced here with SMP and means the same thing under this legislation, as the previous legislation used and referred to dominance.

SCHEDULES 2 and 3

NTRC St. Vincent and the Grenadines

NTRC disagrees with the content of the schedules. They represent that such content should be in regulations and not the bill for ease of change.

ECTEL's Response

ECTEL notes the comments and advises that section 133 of the present draft Bill makes provision to address these concerns as the Minister has power to change the schedules.

CONCLUDING REMARKS BY CONTRIBUTORS TO THE CONSULTATION

DIGICEL in conclusion submits that a more balanced Bill is required. Additionally, Digicel claims that net neutrality and roaming have found their way into the bill without a consultation and that any intervention by a regulator must be proportionate, reasonable and justified.

NTRC St. Vincent and Grenadines in conclusion submits that we a policy decision on content must be made. In a converged environment, the Commission opines that we cannot continue to refuse to regulate content, as the providers are regulating it not in the interest of consumers.

- Our NTRC has not seen in the bill any ability to impose fines; yet other regulators in the region are able to impose fines.
- No provisions exist on dealing with non-ionizing radiation.
- The Minister should be given the power to delegate his authority to sign licensees, in instances where he is out of state or unavailable.

ECTEL's CONCLUDING REMARKS

ECTEL would like to thank all who participated and contributed to this consultation. All comments have been reviewed and assessed and an enhanced and enriched Bill has been produced. It is not possible to accept the views of all contributors but the

Directorate hopes that appropriate justification has been provided here as to why one view prevailed over another.

Consultation

NEW LICENCE TEMPLATE AND NEW LICENCE APPLICATION FORM

Questions and Comments on the Structure of the New Unified Licensing Regime to be implemented in ECTEL Contracting States

10.3 - Questions related to the New Licensing Regime

a) *Would you agree that a licencing regime which requires a provider to apply only once is desirable?*

Cable & Wireless

C&W said yes as it is more efficient.

DIGICEL

Digicel indicated that although this is desirable, they noted the following:

- i. The new licencing regime is not clearly set out in the Bill. The Bill defines the classes.
- ii. It is not clear if the scope of the licence will be so wide as to embrace any kind of service which a licensee can provide using any technology. This is recommended by Digicel.
- iii. It is not clear if a single licence will be issued and the annexes will vary depending on the type of network to be operated.
- iv. It is not clear if the licence is to be extended to OTT operators. Explicit provision should be made in the bill to enable this by including:
 - a. these provisions should have extra-territorial effect.
 - b. OTT operators need not be incorporated in the ECTEL States but need to provide an address for service in the Contracting States.
 - c. All applicants for service licences must include a letter of intent by the holder of an appropriate network licence in the, that facilities would be provided to the applicant subject to the grant of the service licence and to the terms of agreement between the parties.
- v. A distinction has been made to network Facility providers, Network service providers and network based operator licences- but no indication has been given as to how each category would be treated from a regulatory point of view. They do not understand which annex would apply to each type of licence.

ECTEL's Response

Under the current regime, a provider needs to complete a separate application form for each service being applied for in relation to an individual licence or class licence. ECTEL has made provision in the draft Bill for an applicant to complete only one form in relation to Individual Licences only. This will greatly assist providers who wish to apply for more than one service within the ECTEL Member States.

b) *Would it assist ECTEL if only one application for a licence needed to be made to enable a provider to operate in any Member State?*

Cable & Wireless

C&W agrees as it is especially beneficial for regional providers.

DIGICEL

Digicel states that the advantages of this are:

- (i) reduced barriers to the regional space.
- (ii) reduction of administrative burden on NTRCs.

ECTEL's Response

A provision has been incorporated in the draft EC Bill to enable a licensee to use a licence granted within 3 years of its grant, to make an application to apply to any Member State for a grant of an operating Licence. It is hoped that this incorporation will greatly assist regional operators.

c) *Would it be beneficial to be able to complete an electronic communications application online?*

Cable & Wireless

C&W responded this should be standard.

DIGICEL

Digicel agrees that this would be beneficial.

ECTEL's Response

The Directorate is seeking to implement an online application form process and is pleased that such an improvement would be welcomed by providers.

d) *Are you familiar with the various licencing regimes, which have been presented here?*

Cable & Wireless

C&W said YES.

DIGICEL

Digicel says yes, but there is ambiguity as to what ECTEL intends to implement.

ECTEL's Response

The Directorate has noted the concerns raised by providers as to the ambiguities and uncertainties created by the new licencing regime proposed. As such, ECTEL has decided to maintain the current regime, as providers are familiar with it, as it has been in place over the last 16 years. However, the Directorate will review the current

licensing regime further with a view to identifying a regime which meets the needs of the ECTEL Contracting States.

e) What are your views on the submission of all licence applications to the Minister of each Member State as he/she is the one who issues it?

Cable & Wireless

C&W said there does not seem to be any value in submitting to the Minister, who then submits to ECTEL, as he cannot act without the recommendation of ECTEL. This amounts to unnecessary bureaucracy, which results in delay.

DIGICEL

Digicel states that the NTRCs should simultaneously receive a copy.

ECTEL's Response

ECTEL agrees that the submission of licences to the Minister directly before it gets to the Commission or ECTEL would render the process less user friendly. This requirement was suggested in line with the rules of legislative drafting, which states 'He who grants must receive.' However, this rule can be achieved by the submission of the application being made to the NTRC, which will act as a conduit. The Commissions will process the class licence applications and forward the individual licence applications to ECTEL. Once a recommendation has been made by either ECTEL or the NTRC, that recommendation will then be forwarded to the Minister along with a copy of the application.

10.4 - Questions & Comments on a multi-service network-licensing regime

a) What are your views on the adoption of a Multi-Service Network Licensing regime in the ECTEL Member States?

Cable & Wireless

C&W indicated that it would prefer a true unified Licensing regime.

DIGICEL

Digicel is in favour of this regime, as it makes for a more seamless regulatory experience and allows for easier self-monitoring.

ECTEL's Response

ECTEL appreciates the responses which have been received and will further review the options proposed by the licensee as an alternative to ECTEL's proposal. A further consultation will therefore be required in this regard.

b) Do you favour the use of only one licence, which gives permission to carry out more than one service?

Cable & Wireless says yes.

DIGICEL says yes.

ECTEL's Response

ECTEL has made provision for the use of only one individual licence, which can govern the services being provided and which will require separate annexes. The form of the individual licence may differ only in relation to the type of service being provided. However, it is to be noted that these provisions have been restricted to individual licences only. Thus, providers will need to apply separately for class licenses required as they do now to the NTRC.

c) Why do you favour this regime?

Cable & Wireless

C&W favours this regime because of its flexibility.

d) Should this regime be extended to include service licences as well? Give reasons for your answer.

Cable & Wireless

C&W says yes, as the same annexes are relevant to Network-service licences. It also streamlines the application process. C&W argued that OTTs should be included as they provide service.

ECTEL's Response

It was hoped that the service licences could be included within this one-licence framework. However, the Directorate found that this could not be achieved at this time, due to variations in the licences based on the Member State to which it relates. Therefore, further work will be undertaken to achieve this objective.

f) What alternative suggestions if any do you have?

Cable & Wireless

C&W says a truly unified licence.

g) Why are you of the view that your suggested regime would be better suited for implementation in the ECTEL States?

Cable & Wireless

C&W says a unified regime is a simpler regime to administer, is cost effective and most suitable for a converged environment.

ECTEL's Response

Changing of the licensing regime to a unified licensing regime or any other suggested in the consultation has been placed on hold for the moment by the Directorate. It is the decision of the Directorate that further market analysis needs to be carried out before such a system can be implemented in the ECTEL Member States. The Member States are separate territories operating under a treaty and therefore, consent to a unified regime would have to be obtained from each state before such a regime can be implemented.

10.5 - Questions & Comments on Changes to the Licence

- a) **Have you observed any specific areas of the current Licences which are problematic?**
- b) **If yes what areas are they?**

Cable & Wireless

(i) **C&W** indicated that the classification of licenses into "individual" and "class" is problematic. It requires the operator applying for multiple services to submit separate applications for each type of activity. Such a licencing system is specific to technologies.

(ii) The legal definition of what constitutes a class licence and what constitutes an individual licence is also confusing even for experienced regulators.

(iii) These classifications are technology dependent and a new licence needs to be developed for each technology.

(iv) C&W advised caution however in moving away from "class and individual licences" as there is much precedence on the administration of such systems. ECTEL should guard against moving away from such and adopting a less understood system.

(v) ECTEL should consider other options eg general authorization before moving to a "network" and "service" type approach.

(vi) C&W believes that the current licences strike the right balance between certainty for providers and regulatory oversight.

ECTEL's Response

ECTEL aims to have a technology-neutral regulatory framework. The introduction of a new licensing system has therefore been placed on hold to conduct further review and investigation into possible models which could be considered for implementation.

- c) **Do you think the problematic areas of the current licence can be fixed in light of the current changes being made?**

Cable & Wireless

C&W believes that the problem can be fixed but suggests that ECTEL considers a unified licensing regime or general authorization.

ECTEL's Response

ECTEL will be considering a unified licensing regime or general authorization amongst other options for implementation. The Directorate has greatly benefited from this consultation on the licensing regime, as operators have expressed their preference for general authorization. It is yet to be analysed how, if at all, such a regime could be adopted in ECTEL Member States.

- d) **Do you have any suggestions which may assist with revising the current licenses to meet the needs of a multi-service network licensing regime?**

Cable & Wireless

C&W referred to its previous responses.

- e) **What problems do you foresee in adopting the changes suggested in this consultation document?**

Cable & Wireless

C&W stated an insufficient understanding of the regime proposed??? by ECTEL and NTRCs as being problematic and that the transition from the old to the new as possibly creating some challenges.

ECTEL's Response

ECTEL agrees that it is imperative that any licensing regime implemented be clearly understood by all stakeholders.

- f) **Is there any category of licence which you envisage will not fit into the current changes?**

Cable & Wireless

C&W indicated NO.

- g) **Should Special Licences continue to be a special category under the revised EC Bill?**

Cable & Wireless

C&W responded YES.

ECTEL's Response

ECTEL will retain the category of special licences but the length of the licence will be extended from 10 to 21 days. This increase in days is in keeping with the needs of the region, as such licences are used to facilitate cricket and other sporting activities.

h) Is there any other way of deal with Special Licences? Can you make any suggestions?

ECTEL's Response

There were no responses to this question.

10.6 - Questions & Comments on the consequences of adopting a multi-service licensing regime

A) Do you have any concerns about this regime recreating the monopolies of the past?

Cable & Wireless

C&W responded NO. A licensing regime cannot create the market conditions for a monopoly.

b) If yes, how do you envisage monopolies being recreated based on this new regime?

Cable & Wireless

C&W viewed this question as not applicable.

ECTEL's Response

It is important that any licencing regime in place is equitable to all participants.

b) Having reviewed the draft EC Bill, will the new competition provisions address your concerns?

Cable & Wireless

C&W responded NO. The competition provisions are troubling in breath and scope. The provisions give too much power to ECTEL and the NTRCs; Use SMP and dominance interchangeably. They are not required for the adoption of a multi-service licensing regime and should be deleted from the draft EC Bill and given over to a body established specifically to respond to such issues.

ECTEL's Response

The competition provisions will help regulate the market and provide clear guidelines as to what may be expected by providers. In order to bridge the gap between the use of

the word “dominant” and “significant market power” in the draft Bill, it was important to let stakeholders know that the word dominance had been replaced with “significant market power”.

d) Is there a need for a licence to provide a network without a service?

Cable & Wireless

C&W indicated that ECTEL should consider all possibilities.

ECTEL's Response

This possibility was considered as there now exist companies who are willing to provide networks without providing a service on that network, but lease out their network to those who wish to provide electronic communication services. The Directorate will give greater consideration to this issue when it revisits the licencing regime. In the meantime the draft EC Bill seeks to ensure that electronic communications services are provided in a non-discriminatory manner.

e) Do you have any additional suggestions? If any, do you wish to put them forward for consideration?

Cable & Wireless

C&W indicated none at this time.

10.7 - Questions & Comments on Spectrum and Numbering

a) Should spectrum and numbering be treated as separate issues?

b) If no, why?

c) If you agree, why?

Cable & Wireless

C&W says YES and they should not be embedded in the licence. This allows for spectrum and numbering issues to be dealt with separately.

DIGICEL: No response.

ECTEL's Response

Spectrum and numbering will be kept separately.

10.8 - Questions & Comments on Redundant Provisions in current licences.

Are there any provisions in the existing licencing regime, which you consider to be redundant or irrelevant and should not be included in the New Multi-

service Network Licences? Please provide examples and possible resolutions or suggestions.

Cable & Wireless

C&W responded N/A.

DIGICEL: No response.

ECTEL's Response

ECTEL has reviewed the provisions of the licenese and removed redundant provisions which relate to technology etc.

Questions & Comments on Net Neutrality

Should adherence to net neutrality and technology neutrality be included in the licences?

Cable & Wireless

C&W stated caution should be exercised when inserting current industry jargon into the licence as the industry may change. Technology neutral is accepted in the industry but net neutrality is more controversial, it may lead to contention and legal challenges. ECTEL should exercise caution when including requirements on OTTs and net neutrality in licensing instruments as these are difficult to change. ECTEL should also impose similar regulation on OTTs as they provide a service and compete with service providers.

DIGICEL

Digicel says NO. This should only be added to the licence when ECTEL has developed a clear framework and policy goals to stakeholders in ECTEL markets. ECTEL first has to decide:

- If it wants maximum broadband connectivity.
- Maximum internet usage?
- The extent to which inclusiveness is a goal?
- Do you want to encourage network investment?
- Do we believe that the commercial benefits of a converged internet should be concentrated or distributed?
- The extent to which different services and service providers should be protected.

The objective of this new licencing regime should be that operators can provide any service regardless of technology used.

ECTEL's Response

The objective of ECTEL is to regulate a technologically neutral regime. Net Neutrality has been an area of concern both to ECTEL and operators, who are concerned about the use of the internet by OTT operators. Net Neutrality goes beyond the use of the internet by OTT operators. ECTEL is of the view that it is essential that open access to the internet is preserved. This access should be preserved by allowing (a) the attachment of any legal device to the internet (b) allowing access to content which is not contrary to public decency and national security (c) the prohibition on the blocking or throttling users from accessing applications or services which might compete with their own business interest or for commercial reasons such as the blocking of Voice over Internet Protocol "VOIP", or the blocking of access to video content over the internet.

To address the concerns of operators in relation to OTT operators ECTEL is to conduct a consultation on OTTs. However, Net Neutrality is a broader issue and will be preserved in the Bill. The decision of the United States Federal Court in favour of President Obama's stand on Net Neutrality, demonstrates an international lean towards the preservation of the essentials of net neutrality as defined above. Further ECTEL will allow for Regulations for reasonable traffic/network management. The proposed regulations will be determined after a period of consultation with all stakeholders.

Questions & Comments on the issuing of new licences whilst the review of the licensing regime is in progress

- (a) Should ECTEL cease the issuing of any new licences until a decision has been arrived at in relation to the new licensing regime?**

DIGICEL

Digicel says No, business should continue as usual.

ECTEL's Response

ECTEL will continue to administer, review and grant licences during this process and will conduct a more in-depth consultation on the way forward for its Member states.

- (b) Should old licences simply be extended for a period of 12 to 24 months to allow effective migration to the new regime?**

DIGICEL

Digicel believes that depending on the extent of the changes, existing licensees should not be any worse off upon promulgation of the Act.

ECTEL's Response

As the licensing regime is not being amended this consideration is no longer necessary.

Questions & Comments related to Migration from old licences to the new regime.

(c) Should stakeholders holding licences migrate onto the new regime automatically?

DIGICEL

Digicel stated that if this is the intention then the following must apply.

- a) Individual licenses should be granted Network/service licenses with authorization to provide an unlimited number of services on the network that they are authorized to operate.
- b) There should be no requirement to complete new application forms or to pay application fees.
- c) All existing licensee must be migrated to the new regime automatically.

ECTEL's Response

It is important that once a new license framework is introduced all licensees are migrated to the new regime. There are always challenges with migration and ECTEL will endeavor to ensure that no one is disadvantaged in the process.

(d) What do you consider to be a reasonable period for migration once the new system is in place?

DIGICEL

Digicel says this would depend on the process involved and the extent of changes that licencees would be required to make.

ECTEL's Response

Although this depends on the process a time limit must be set inorder to ensure a harmonized system is achieved within a reasonable timeframe.

(e) Should current licensed stakeholders be required to provide all documentation previously provided on first application upon migration?

DIGICEL

Digicel say No, application should be required. Current licence holders should automatically migrate to the new regime.

ECTEL's Response

The sentiment expressed here will be considered during the next review of the licensing regime.

Questions & Comments relating to the use of Stakeholder forums to explain new regime

(f) Would licensed operators and stakeholders appreciate a forum or series of forums with ECTEL to explain the new regime and how they may be impacted by it?

DIGICEL- YES as there are some ambiguities which must be addressed.

ECTEL's Response

ECTEL seeks to maintain an excellent working relationship with all providers and will during the consultation process engage with operators openly, publicly and provide points of contact should they have any queries.

QUESTIONS & COMMENTS RELATED TO NETWORK SERVICE APPLICATION FORM

(a) What are your views on the proposed revised application form?

DIGICEL

Digicel recommends for electronic submission a centrally managed portal for completion of the application, and uploading and submission as opposed to hard copies reduced to pdf and emailed. Further an applicant applying for renewal or amendment should not be required to provide as much information as a new applicant. The form should identify which parts will not apply in that case.

ECTEL's Response

The new application form for individual licenses will be amended to indicate which sections need to be completed depending on the needs of the applicant.

Questions & Comments on suggested clauses to be included in the new licences.

(a) Are there any clauses which in your opinion should be included in the licence? If yes please outline the clause and give a reasons.

Cable & Wireless

C&W responded YES. A clause should be added under both Licensed Services and Licensed Networks respectfully that would say:

- (i) The particular network is licensed to provide any service capable of being carried by the network as technology evolves.
- (ii) The licensee is authorized to provide the particular services in keeping with the development of technology or such services as the technology allows.

ECTEL's Response

Although ECTEL promotes and supports a technologically neutral electronic communications regime unfortunately this approach cannot be adopted at the end of this consultation. ECTEL has noted the desire of the operators and will in the future conduct a further consultation to ascertain the most suitable licencing regime for its Member States.

Cable & Wireless general comments on the draft licence.

- a) The definition of services and connections to licensed network are too influenced by existing technology and technology which is no longer in use e.g. ATM and telex. The services and connections mentioned are so specific that they preclude any allowance for future changes in technology.
- b) The Commission should not seek to identify all the ways voice services can be offered. Services at 6a-C are not used in the region. Some of the provisions are outdated and the licences lack future flexibility.
- c) Licencees can be future proof by enabling providers to provide all services which can be provided over the network regardless of services in keeping with the development of technology.
- d) The objective of technology neutral licensees is not achieved by identifying separately fixed and mobile networks. The Commission should make voice technology neutral in order to achieve its stated objective.

ECTEL's Response

ECTEL has amended the licence to remove aspects of technology which are obsolete.

c) Is there any category of licence which you envisage will not fit into the current changes?

C&W stated no and referred to a previous answer. However, checks of their submission do not reveal the referenced section.

ECTEL's Response

The current licensing regime is to remain and further consultation will take place at a later date on the adoption of a new licensing regime for the ECTEL Contracting States.

d) Should special licences continue to be a category under the revised EC Bill?

Cable & Wireless

C&W stated yes.

ECTEL's Response

As the licensing regime will not be changing special licenses will continue to be a category under the revised EC Bill.

e) Is there any other way of dealing with special licences? Can you make suggestions?

ECTEL's Response

No comments received.

COMMENTS ON THE MODEL LICENCE TEMPLATE PROVIDED

Clause 2 – Interpretation
"Customer Equipment "

Cable & Wireless

C&W commented that customer equipment should be technology neutral. Interpretation should be any equipment used by the customer to access the service of a provider.

ECTEL's Response

ECTEL seeks to promote technologically neutral provisions in the implementation of rules and regulations which govern electronic communications. In this regard ECTEL will review clauses which seek to limit the technology used to provide electronic communications services. In the meantime ECTEL will amend aspects of the license which refers to obsolete technology.

Clause 5 – Duration and Renewal

Cable & Wireless made the following representations at **Clause 5.3**

At the beginning of the clause, remove the words "A licensee wishes" and begin with "To."

DIGICEL - Clause 5.3

Digicel suggested that the requirement for the licensee to apply to the Minister to renew the licence three (3) years prior to the expiry date of the Licence or at a later date if the Minister so determines is inconsistent with the current 45 (1) of the Bill, which refers to a 12-month period.

The 12-month period in the Bill would also be problematic in relation to the renewal of frequency authorizations granted for short terms. Digicel recommends that the Bill should not make special reference to a specific period of time and that this would be more appropriately set out in the licence or frequency authorization.

ECTEL's Response

ECTEL will amend clause 5.3 to ensure consistency with the EC Bill. The suggestion by Digicel that the time-frame within which to renew be addressed not in the Bill, but in

the licence, ECTEL appreciates the constraints associated with placing such requirements in the Bill as it would require an Act of Parliament to amend it. This suggestion is acceptable to ECTEL. In relation to frequency authorizations which have been granted for a relatively short time, this is addressed under special licences and a different set of rules apply in relation to these. These licences are not renewable. A new one must be applied for on each occasion. The edits suggested by C&W will also be considered during the revision of the licences.

DIGICEL

In relation to clause 5.6, Digicel stated that the Bill makes no provision for a “renewal fee.” Rather, a provision is made for an application fee to be paid and “application” means any request for a licence, including a renewal. Moreover, this reference to a “renewal fee” is also made in the existing framework and causes confusion as to whether a fee other than the application fee must be paid upon the renewal of a licence. Consequently, Digicel recommends that reference to “renewal fee” is removed and replaced with “application fee”

ECTEL’s Response

Digicel’s concern has been addressed and as stated, a renewal fee is to mean an application fee and an application fee is to mean a renewal fee. This means that the same fee is to be paid whether or not a new application is being made or an application for renewal of one’s previous application.

Clause 7 – Modification of Licence

Section 40 (2) of the Bill provides a licensee who seeks a modification to apply in the same manner as he/she did for the initial licence. This requirement is quite an onerous one and likely unjustified if the modification proposed is minor. Therefore, Digicel recommends that the term “modification” should be defined so that the process set out in section 40 of the Bill applies only in the case of a material modification or amendment to the licence.

ECTEL’s Response

This representation is to be considered by the Directorate. However, it may be necessary to try to find consensus with stakeholders on what amounts to a modification before a definition is adopted. In light of this view this matter will be addressed at a later date.

Clause 8 – Surrender of Licence

Cable & Wireless suggest after the word “Minister” add “which consent shall not be unreasonably withheld or delayed.”

ECTEL’s Response

ECTEL notes the need for all parties involved in this process to act reasonably and expeditiously.

PART II – LICENCE CONDITIONS

Clause 1 – Fees and Monies Owed

Cable & Wireless – Clause 1.2

Consistency of terminology. NTRC is used instead of Commission. Commission is the terminology used in the rest of the draft licence.

ECTEL's Response

ECTEL notes the need for consistency and will review and adopt the suggestion of C&W.

Clause 4.2 - Registration of Customer Information

Cable & Wireless

The word 'reasonably' should be inserted before the word 'necessary'

DIGICEL

This clause is unauthorized in the Bill. There is no legislative jurisdiction for this either in the Bill or in the existing legislation. To insert such a provision is to act ultra vires the legislation and the clause should be removed.

ECTEL's Response

The purpose of a Bill is to consider and implement new legislation. The enactment of provisions to ensure the registration of customer information is therefore not contrary to law.

Clause 5 - Confidentiality of Customer Information

Cable & Wireless

Disclosure should only be made pursuant to a legal obligation, whether by law or court order.

DIGICEL

This provision does not afford adequate protection both to customers' information and to the licensees who have an obligation to observe the confidentiality of same. The provision, in its current form is broad in terms that any law enforcement official or security agency personnel can make a request for the disclosure of customer information. Digicel recommends that there should be checks and balances before the release of customers' information. Therefore, we further recommend that such information should only be disclosed by warrant, order of the court, or by an order of the Commissioner of Police.

ECTEL's Response

ECTEL agrees that customer information should only be disclosed upon the customer giving his or her consent to do so, upon the obtaining of a court order or by order of the Commissioner of Police to assist an investigation.

Clause 7 – Licensee's Obligations to Customers

The Bill requires the licensee to establish a process for the resolution of complaints with customers. There is a significant distinction between the resolution of complaints and the resolution of disputes. If a complaint is addressed satisfactorily, there is no opportunity for the issue to develop into a dispute. Digicel recommends that the word "disputes" be replaced with "complaints."

ECTEL's Response

The Dispute Resolution procedures have changed slightly under the Bill. The Dispute Resolution Regulations have therefore been amended following consultation. Complaints between the customer or a member of the public and the operator can now be made using a form in the Consumer Protection Regulations. The form is the same as the Form 1 previously used but it has been moved to the Consumer Protection Regulations. In essence the changes seek to provide clear lines of separation between the investigative arm of the Commission and the adjudicative arm. In this regards the Commission is empowered to receive, investigate and register complaints and their resolution where agreement has been reached between the operator and the complainant. The Commission is only consulted when negotiations have broken down between the member of the public / customer and the operator. Where a resolution is arrived at, the Commission is required to record this outcome.

Where any party is dissatisfied as to the manner in which the Commission has carried out an investigation it may appeal to the Tribunal. It is the view of the Directorate that this revised approach provides clarification and transparency in the process.

The matter remains a complaint whilst it involves only the complainant and the licensee. However, once it has been escalated to the Commission it becomes a Dispute. In light of this, it has been suggested that the Complaint Form in the Dispute Resolution Regulations be inserted into the Consumer Protection Regulations as this form is the first act by the complainant.

Clause 8 – Emergencies

Cable & Wireless – Clause 8.3.4

This provision is expensive to implement, and yet is not likely to add anything to the safety and security of the customer. This provision should be deleted.

ECTEL's Response

ECTEL will review.

Clause 12 – Non-Discrimination and Fair Trading

Cable & Wireless – Clause 12.3

C&W indicated that as currently drafted customer equipment means mobile handset, so as it stands this prohibition would only apply to mobile handsets.

The first part of this clause 12.6 is incorrect because an anticompetitive agreement does not necessarily create significant market power and the second part is redundant given clause 12.5. This clause should be removed.

ECTEL's Response

ECTEL will review the clauses to ensure that it provides the correct remedy.

In clause 12.6, after power add 'in accordance with the procedure established by the Act'

ECTEL's Response

ECTEL will review in light of the suggested drafting edits as it is the intent of the Directorate to ensure that all licences are compliant with the Act.

Clause 14 – Change of Control/Transfer of Shares

Cable & Wireless – Clause 14.1

The Licensee cannot divest itself of its own shares.

ECTEL's Response

The aim here is not to prevent the licensee from divesting itself of its shares but to ensure that shell companies are not created as a result and used to by-pass the provisions of the Telecommunications Act. A provision has therefore been inserted to ensure due diligence by the Regulator.

Cable & Wireless - Clause 14.4

Neither 'competition' nor 'competition body' are defined.

ECTEL's Response

Where a word has not been defined it will be given its natural meaning. The word competition should therefore be given its natural meaning. The word competition body is defined in the draft bill as: "Competition body" means a national or regional entity which makes decisions relating to competition;

Clause 15– Rights of Access

Cable & Wireless – Clause 15.2

'Offers' should be 'officers'.

ECTEL's Response

The observation is noted and the word has been amended accordingly.

Cable & Wireless – Clause 15.6

After word 'suffers' insert the word 'proven'

ECTEL's Response

The suggestion of C&W is noted and will be considered when the licensees are reviewed.

Clause 16 – Interconnection Agreements

Cable & Wireless – Clause 16.4

Before the word 'cost' insert 'Long Run Incremental

ECTEL's Response

This suggestion is also noted. However, the Directorate needs to consider all "cost orientation" options.

Annex A (1)

Cable & Wireless

Remove word 'subject'.

ECTEL's Response

This suggestion will be reviewed.

Annex B – Licensed Services (Public Mobile)

DIGICEL

Based on the definition of "Internet" in the Model Licence Template, mobile data services constitute a form of "internet access." There is inconsistency with the two definitions that must be corrected. Digicel suggests that there be an amendment to the definition of "internet access" to only refer to the provision of access to the internet by fixed technologies.

Digicel also believes that there might be issues with the technical standards and stated that they would like a further opportunity to review these.

ECTEL's Response

As ECTEL has decided against the implementation of the proposed licensing regime at this time, all stakeholders will again have an opportunity to review the licensing regime and any proposed licence template.

Annex C – Licensed Networks

Licensed Network for Fixed Public – Clause 1.1

Cable & Wireless - A definition of 'Transitional Provisions' is required.

Licensed Networks for Subscriber TV

Cable & Wireless said see previous comment above about excluding "content" from the licence.

ECTEL's Response

These suggestions will be taken into account when the licences are reviewed.

Annex D – Obligation of Licensees

Interconnection and Leased Line Obligations for Submarine Cable only

Cable & Wireless – *Interconnection Obligation 1 (b)*

The use of 'provide for' is vague.

Cable & Wireless – *Leased Line Obligation 2 (a)*

Delete 'indirectly'.

ECTEL's Response

The obligations imposed on licensees under the Bill in relation to submarine landing cables have significantly changed and the terms of the licence will be amended to reflect the same once the draft Bill comes into effect.

Annex D - Buildout Obligations for Fixed Public Only

Annex E - Universal Service Obligations for Fixed Public

Cable & Wireless

- (i) The provisions of this section are a throwback to a long-gone era in telecommunications. And it is at odds with the fact that the licenses are intended to be technology neutral and so the Commission should not be specifying the technology to be used to provide a service.
- (ii) The fixed line network is unlikely to grow to any place where it does not currently

exist and where it is not economically feasible. The entire industry knows that mobile has supplanted the fixed line as the main means of communication for most customers and the industry also knows that the mobile network is in far more places than the fixed network will ever reach. The establishment, therefore, of licence obligations that require roll-out of the fixed network and the roll-out and maintenance of payphones is illusory and has no place in the telecoms environment of today much less in the next fifteen (15) years.

(iii) The same is also applicable to **Annex E** which addresses '**Universal Service Obligations for Fixed Public**'. Conditions 1a and 1b cannot be met because service from the fixed network will not be available to all persons regardless of their geographical location because the fixed network is not present in all geographical location. This is similarly the case with payphones.

(iv) At clause 3 of **Buildout Obligations for Fixed Public Only of Annex D** add 'where facilities exist' after the word 'basis'.

ECTEL's Response

ECTEL is grateful for the observations made here and notes the decline in the expansion of fixed lines and surge in the uptake of mobile facilities. However the Universal Service Fund is in place to provide access to electronic communication services in underserved areas, hence the need for the obligation. It may be that someday there will be no need to speak of "Fixed Public" but ECTEL considers this term still relevant within the context of its Contracting States.

Annex D - Geographical Coverage Obligation for Public Mobile Only – Clause 1

Cable & Wireless

The meaning of 'geographical coverage of at least 95% for each cell' is unclear.

ECTEL's Response

Geographical coverage relates to the location covered. Where an operator proposes to cover a geographical area, the service that can be obtained as a result of that coverage must be up to 95%.

Annex E - Universal Service Obligations

Universal Service Obligation for Public Mobile

Cable & Wireless

1a. 100% geographic coverage for mobile is an unusually high requirement because the tendency for mobile networks is that there may be pockets of unserved communities or a few areas where the service is highly variable. This is the nature of the technology

rather than a failing on the part of the provider. The requirement for 100% geographic coverage then puts service providers in an untenable position. The standard needs to be reviewed.

1b. Dial-up is not relevant for mobile and this clause should be deleted.

DIGICEL

The obligations proposed in Annex E are cause for serious concern as they seek to impose significant obligations on operators which do not exist at present. The subject of universal service was the subject of much consultation before Regulations were enacted and the Universal Fund established. Digicel believes that the imposition of these obligations is an attempt to introduce through the back door additional obligations, without consultation, described as universal service obligations. Digicel submits that this is not the process by which ECTEL should seek to do this. This issue should be addressed by a separate consultation to give effect to appropriate amendments to the existing Universal Service Obligations.

Digicel notes that there are special obligations which ECTEL has not justified as being appropriate universal services for the Markets and object to this. They stated that they will set their position on this issue in more detail in a full and proper consultation on the subject.

ECTEL's Response

A consultation has taken place in relation to Universal Service. The scope of universal service will now include access as provided under the Bill. This was necessary to address the absurdity of the provision of the service but without providing access devices. It had become a topic of much debate as to whether the current provisions under the Bill made allowance for the provision of access devices. This is now made clear in the EC Bill. Further, provisions on dial-up, which is now obsolete, will be removed.

Annex E – Universal Service Obligation for Submarine Cable Only

Cable & Wireless

Submarine Cable ends at the landing station. Any capacity to provide broadband internet access to public places would have to come from a terrestrial operator. Accordingly, this provision needs to be removed.

ECTEL's Response

ECTEL adopts the view which has been expressed here and Universal Service obligations will not be placed on operators of submarine cable landing stations.

Annex F – Technical Specifications for Submarine Cable Only – Clause 4

Cable & Wireless

Backhaul would come from land-side operators, that is, the terrestrial service providers not the subsea cable operator. Therefore, this clause should be removed.

ECTEL's Response

As Backhaul denotes transmission capacity that connects one point to another over land, the intent of ECTEL as well as C&W is the same.

COMMENTS ON COMMENTS IN RELATION TO THE NEW LICENCE

Digicel Comments specific to Provisions of the Draft Licence

(Comments in response to Lime's proposals directly above)

Part II-Section 16.4 - Interconnection Agreements: Digicel disagrees with Lime's position. Long Run Incremental costs are only one form of cost orientation. The appropriateness of this remedy can only be determined after an examination of market conditions, noting that these conditions may change over the course of a licence duration and thus, it is not appropriate to insert a so specific condition into the licence. Additionally, Fixed Universal Service obligations should continue to be imposed but the exact form should be reviewed to meet forward-looking policy objectives.

Annex D: C&W positions on this topic indicate that it has no intention of investing in the fixed network.

Annex E: Digicel notes that Lime's comments address issues that should be dealt with by way of a separate standalone consultation on this issue.

Questions and Comments related to the network-service application form

1. What are your views on the proposed revised application form?

Cable & Wireless stated that the form is similar to the existing form. Advantage: Only one form will be required and an application form will not be required for a FA since spectrum and numbering will be dealt with separately.

Digicel stated that for electronic submissions, there should be a centrally managed portal on which the application may be completed, attachments uploaded and submitted (as opposed to hard copies reduced to pdfs and email).

ECTEL's Response

ECTEL has endeavored to keep the form similar to the one used currently, to secure a level of familiarity which the providers already have with the form. The use of one form will significantly reduce the burden on operators. However a form will need to be completed for spectrum and numbering as they are dealt with separately.

In relation to Digicel's submissions on the matter, ECTEL is in the process of implementing an electronic application submission system, which will be a centrally managed portal on which applications can be completed, documents uploaded and submitted.

2. Does it adequately provide for the application of multiple licences in one form?

Cable & Wireless said yes, it appears so.

Digicel said certainly, an applicant who is applying for an amendment, a renewal or surrender should not be required to provide as much information or to satisfy the same requirements as a new applicant. Thus, the form should clearly identify the non-applicable parts.

ECTEL's Response

ECTEL will identify the non-applicable parts of the form for applicants seeking renewal, modification or surrender of their licences.

3. What changes, if any, would you suggest?

Cable & Wireless stated that they had no comment at this time.

Questions and comments for Stakeholders and Licence Operators

a) Are there any questions or issues which have not been addressed? Please give examples.

Cable & Wireless stated that all questions and issues were raised previously. C&W reserves its right to bring additional comments if necessary.

ECTEL's Response

ECTEL respects the rights of operators to comment and raise issues of concern. This greatly assists the Directorate in its formulation of policy and regulation of the market. However, ECTEL notes that where comments are submitted at the end of this process, it may not have an opportunity to comment or clarify concerns raised.

b) Would you appreciate a person being designated to assist them with any concerns about the revised draft EC Bill, the proposed new network-service licence, and the proposed new network-service licence application form once a final decision has been made as to regime to be adopted?

Cable & Wireless stated that yes, this will be useful.

ECTEL's Response

The General Counsel will be available at the offices of ECTEL to address any concerns or queries by operators relating to the Bill every Monday from 2 p.m. for 12 months from the date of publication and passing of the Bill in any of the ECTEL Contracting States. Questions and Comments may also be sent in for consideration via email at: ectel@ectel.int

Conclusion by operators

Cable & Wireless thanked the Commission for the consultation. They admitted that some changes are required to the Telecommunications Act to ensure that the law is adequate for the times but urged caution. They do not support the wholesale replacement of the current Act with the draft bill, as the bill is likely to make the region less attractive to investors; it is intrusive and seeks to introduce an aggressive interventionist regulator.

ECTEL's Response

ECTEL would like to thank all operators and stakeholders for their participation. The comments received have been insightful and of much assistance to ECTEL. For example, the consensus by all operators that a unified licence or general authorization should be the way forward has resulted in ECTEL rethinking its proposed regime for its Contracting States and putting its proposal on hold to give further consideration to the views expressed by stakeholders. The discussion and debate with stakeholders has led to the design of an application form which provides a little more flexibility and reduces paperwork.

In relation to the draft EC Bill, the Bill has been reviewed substantially based on the comments received. The main areas are as follows:

Part 1: The part addresses preliminary matters such as definitions. As part of the revision of the bill the use of the word "electronic communications" has replaced the general use of the word 'telecommunications'. A section has also been provided to address the "Objects" of the Bill, which includes a provision to safeguard "net neutrality" at section 3 (2) (d).

Part 2: Provides for the powers and duties of Ministers.

Part 3: Provides for the establishment, composition, functions and powers of the Commission.

Part 4: Addresses the issue of licensing and the grant of frequency authorizations. Modification of licenses is also addressed and transfer of licenses, as licenses are none transferable under these provisions. The change of control of the Licensee has also

been addressed as well as the need to notify the Minister of change in significant interest and the power of the Minister to grant a certificate of non-objection.

Part 5: The rights and obligations of Licensees and frequency authorization holders are addressed here, in relation to interconnection, submarine cables, data reporting, number portability and tariffs and consumer protection.

Part 6: Matters relating to competition and anti-competitive agreements are addressed here. The use of market analysis to determine significant market power and the obligations of licensees having significant market power.

Part 7: Universal Service has been amended to include access. The Fund has now been designated the Universal Service and Access Fund.

Part 8: As more offences have been added to the legislation, part 8 makes provision for offences such as connection of equipment to a public electronic communications network, disclosure of personal information, liability of body corporates amongst other offences.

Part 9: This part speaks to the investigative powers of the Commission are for breaches of the legislation and the use of search warrants to obtain evidence.

Part 10: Dispute Resolution and the complaints procedures are recorded here.

Part 11: In the interest of ensuring transparency an independent tribunal has been set up under this part to address unresolved matters, between customer and licensees.

Part 12: This part sees to address miscellaneous matters such as fees, exchange of information and provides for a general penalty clause where a penalty has not been provided for under the Act.

The draft Bill has now been approved by the Board of ECTEL and the Council of Ministers. The task now ahead is to have it promulgated in all ECTEL Member States.

ECTEL looks forward to its continuing working relationship with operators and stakeholders as it regulates the electronic communications space within the ECTEL Contracting States and complies with its mandate as set out in the Treaty.